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A
COMPLETE COLLECTION
OF
State Trials
AND
PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS
FROM THE
EARLIEST PERIOD TO THE YEAR 1783,
WITH NOTES AND OTHER ILLUSTRATIONS:
COMPILED BY
T. B. HOWELL, Esq. F.R.S. F.S.A.
AND
CONTINUED
FROM THE YEAR 1783 TO THE PRESENT TIME:
BY
THOMAS JONES HOWELL, Esq.

VOL. XXVI.
[BEING VOL. V. OF THE CONTINUATION]
96—98 GEORGE III.....A. D. 1796—1798.

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ERRATA.

- p. 8, l. 10, after Pleas, insert and a judge of the Court of King's-bench.
- p. 15, ll. 20 & 21, for of the extraordinary nature, the, read the extraordinary nature
of the
- p. 64, l. 28, for the, read to.
- p. 104, l. 2, for that, read the.
- p. 105, l. 12, after this, insert witness.
- p. 111, l. 2 from bottom, for author, read authority.
- p. 120, l. 22, for passed, read pass.
- p. 122, l. 19, for regards, read regarded.
- p. 140, l. 17 from bottom, the words Do you know, &c. should commence a new line.
- p. 149, l. 5, for Crossfield that, read Crossfield; that.
- p. 708, l. 10, for cruel conclude, read cruel to conclude.
- p. 720, l. 31, for a of, read of &.

STATE TRIALS,

&c. &c.

611. Proceedings on the Trial of ROBERT THOMAS CROSSFIELD for High Treason; at the Sessions House in the Old Bailey, on Wednesday the 11th and Thursday the 12th Day of May: 36 GEORGE III. A. D. 1796.*

On the 31st of August, 1795, Robert Thomas Crossfield was apprehended at Fowey in Cornwall, sent up to London, and was committed by the privy council to the Tower.

On the 14th of January, 1796, the Grand Jury for the city of London, sitting at the Sessions-house in the Old Bailey, returned a true bill against Robert Thomas Crossfield, Paul Thomas Le Maitre, John Smith and George Higgins, for high treason.

On the 15th of January, Paul Thomas Le Maitre, John Smith, and George Higgins surrendered themselves in court, and were committed to Newgate.

On the 20th of January, Mr. Gurney was assigned by the Court, of counsel for Paul Thomas Le Maitre, John Smith, and George Higgins.

On the 16th of February, Mr. White, solicitor to the Treasury, delivered to each of the prisoners a copy of the indictment, a list of the jurors impannelled by the sheriffs, and a list of the witnesses to be produced by the crown, for proving the said indictment.

On the 17th of February, Mr. Adam was assigned by the Court, of counsel for Paul Thomas Le Maitre, John Smith, and George Higgins.

On the 20th of February, Mr. Adam, and Mr. Gurney were assigned of counsel for Robert Thomas Crossfield.

On the 5th of April, Robert Thomas Crossfield was removed by Habeas Corpus from the Tower to Newgate.

At the session, on the 6th of April, the prisoners were arraigned on the following indictment, and severally pleaded Not Guilty.

CAPTION.—*London.*

AT the general session of oyer and terminer of our lord the king holden for the city of London at Justice Hall in the Old Bailey within the parish of Saint Sepulchre in the ward of Farringdon without in London aforesaid on Wednesday the thirteenth day of January in the thirty-sixth year of the reign of our sovereign lord George the third king of Great Britain &c. before William Curtis esquire mayor of the city of London sir Archibald Macdonald knight chief baron of our said lord the king of his court of exchequer John Heath esquire one of the justices of our said lord the king of his court of Common Pleas Sir Alexander Thompson knight one of the barons of our said lord the king of his said Court of Exchequer Richard Clarke esquire William Pickett esquire Paul Le Mesurier esquire Stephen Langston esquire aldermen of the said city John Silvester esquire and others their fellow justices of our said lord the king assigned by letters patent of our said lord the king made under the great seal of our said lord the king of Great Britain To the same justices above named and others or any two or more of them directed to inquire more fully the truth by the oath of good and lawful men of the city of London and by other ways means and methods by which they shall or may better know as well within liberties as without by whom the truth of the matter may be better known of all treasons misprisions of treason insurrections rebellions counterfeittings clippings washings false coinings and other falsities of the moneys of Great Britain and other kingdoms or dominions whatsoever and of all mur-

* Taken in short-hand by Joseph Gurney.
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thers felonies manslaughter killings burglaries rapes of women unlawful meetings conventicles unlawful uttering of words assemblies misprisions confederacies false allegations trespasses riots routs retentions escapes contempts falsities negligences concealments maintenances oppressions champartys deceits and all other evil doings offences and injuries whatsoever and also the accessories of them within the city aforesaid (as well within liberties as without) by whomsoever and in what manner soever done committed or perpetrated and by whom or to whom when how and after what manner and of all other articles and circumstances concerning the premises and every of them or any of them in any manner whatsoever and the said treasons and other the premises to hear and determine according to the laws and customs of England by the oath of Henry Rutt William Arthur Adam Dennis William Hunter Thomas Knott Joshua Knowles Alexander Lean Thomas Ayres John Tombs Charles Aldridge John Guy Thomas Fellows James Slatford John Back Charles Scholfield Joseph Aldridge and William Kine good and lawful men of the said city now here sworn and charged to inquire for our said lord the king for the body of the said city It is presented in manner and form following (that is to say)

INDICTMENT.—*London to wit.*

The jurors for our lord the king upon their oath present that Robert Thomas Crossfield late of London gentleman Paul Thomas Le Maitre late of the parish of Saint Ann Soho in the county of Middlesex watch case maker John Smith late of Westminster in the county of Middlesex aforesaid bookseller and George Higgins late of London druggist being subjects of our said lord the king not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said lord the king their supreme true lawful and undoubted lord and wholly withdrawing the cordial love and true and due obedience which every true and faithful subject of our said lord the king should and of right ought to bear towards our said lord the king on the first day of September in the thirty-fourth year of the reign of our sovereign lord George the third by the grace of God king of Great Britain France and Ireland Defender of the Faith &c. and on divers other days and times as well before as after at London aforesaid (to wit) in the parish of Saint Dunstan in the West in the ward of Farringdon without maliciously and traitorously with force and arms &c. did

compass imagine and intend to bring and put our said lord the king to death. And to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid and on divers other days and times as well before as after at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid did together with divers other false traitors whose names are to the said jurors unknown with force and arms maliciously and traitorously conspire combine consult consent and agree to procure make and provide and caused to be procured made and provided a certain instrument for the purpose of discharging an arrow and also a certain arrow to be charged and loaded with poison with intent to discharge and cause to be discharged the said arrow so charged and loaded with poison from and out of and by means of the said instrument at and against the person of our said lord the king, and thereby and therewith to kill and put to death our said lord the king.

And farther to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid in the ward aforesaid with force and arms maliciously and traitorously did employ and engage and cause to be employed and engaged one John Hill to make and fashion divers (to wit) two pieces of wood to be used as models for the making and forming certain parts of the said instrument from and out of and by means of which the said arrow was so intended to be discharged at and against the person of our said lord the king as aforesaid for the traitorous purpose aforesaid and did then and there deliver and cause to be delivered to the said John Hill a certain paper with certain drawings thereon drawn and designed as instructions and directions for making such models.

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid and on divers other

days and times as well before as after with force and arms at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid did meet consult and deliberate among themselves and together with divers other false traitors whose names are to the said jurors unknown of and concerning their said intended traitorous killing and putting to death of our said lord the king by the means and instrument aforesaid and how and where such killing and putting to death might be most readily and effectually accomplished.

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid with force and arms maliciously and traitorously did employ and engage and cause to be employed and engaged one Thomas Upton to assist in making the said instrument from and out of and by means of which the said arrow was so intended to be discharged at and against the person of our said lord the king as aforesaid for the traitorous purpose aforesaid and did then and there for that purpose deliver and cause to be delivered to the said Thomas Upton a certain paper with certain figures and drawings thereon drawn and designed as instructions and directions for making such instrument and also certain pieces to wit two pieces of wood as models for the making and forming certain parts of the said instrument

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid with force and arms maliciously and traitorously did deliver and cause to be delivered to the said Thomas Upton a certain metal tube to be used by him the said Thomas Upton in the making and forming of the said instrument from and out of and by means of which the said arrow was so intended to be discharged at and against the person of our said lord the king as aforesaid for the traitorous purpose aforesaid and as a part of such instrument

And farther to fulfil perfect and bring to effect their most evil and wicked treason

and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid and no divers other days and times as well before as after at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid did together with divers others false traitors whose names are to the said jurors unknown with force and arms maliciously and traitorously conspire combine consult consent and agree to procure make and provide and cause to be procured made and provided a certain other instrument with intent thereby and therewith and by means thereof to kill and put to death our said lord the king

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid in the ward aforesaid with force and arms maliciously and traitorously did employ and engage and cause to be employed and engaged one John Hill to make and fashion divers to wit two pieces of wood to be used as models for the making and forming certain parts of the said last mentioned instrument for the traitorous purpose last aforesaid and did then and there deliver and cause to be delivered to the said John Hill a certain other paper with certain drawings thereon drawn and designed as instructions and directions for making such models

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid and on divers other days and times as well before as after with force and arms at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid did meet consult and deliberate among themselves and together with divers other false traitors whose names are to the said jurors unknown of and concerning their said intended traitorous killing and putting to death of our said lord the king by the means and instrument last aforesaid and how and where such killing and putting to death might be most readily and effectually accomplished

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid with force and arms maliciously and traitorously did employ and engage and cause to be employed and engaged one Thomas Upton to assist in making the said last mentioned instrument for the traitorous purpose last aforesaid and did then and there for that purpose deliver and cause to be delivered to the said Thomas Upton a certain other paper with certain figures and drawings thereon drawn and designed as instructions and directions for making such last mentioned instrument and also certain pieces to wit two pieces of wood as models for the making and forming certain parts of the said last mentioned instrument

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins as such false traitors as aforesaid on the said first day of September in the thirty-fourth year aforesaid at London aforesaid in the parish of Saint Dunstan aforesaid and ward aforesaid with force and arms maliciously and traitorously did deliver and cause to be delivered to the said Thomas Upton a certain metal tube to be used by him the said Thomas Upton in the making and forming of the said last mentioned instrument for the traitorous purpose last aforesaid and as a part of such last mentioned instrument against the duty of the allegiance of them the said Robert Thomas Crossfield Paul Thomas Le Maitre John Smith and George Higgins against the peace of our said lord the king his crown and dignity and against the form of the statute in that case made and provided.

[It appearing to the Court that the proper officer had not summoned the jury in time for the prisoners to take their trial at the present session, the trial was postponed to the next session.]

Sessions House in the Old Bailey.—Wednesday, May the 11th, 1796.

PRESENT, Lord Chief Justice Eyre; Mr. Justice Grose; Mr. Recorder; and others his Majesty's Justices, &c.

Counsel for the Crown.—Mr. Attorney General [Sir John Scott, afterwards Lord Chan-

cellor Eldon]; *Mr. Solicitor General* [Sir John Mitford, afterwards Lord Redesdale and Lord Chancellor of Ireland]; *Mr. Low* [afterwards Lord Ellenborough, and Lord Chief Justice of the Court of King's Bench]; *Mr. Garrow* [afterwards a Baron of the Court of Exchequer]; *Mr. Wood* [afterwards a Baron of the Court of Exchequer]; *Mr. Fielding*;—*Mr. Abbott* [afterwards, successively, a Judge of the Court of Common Pleas, and now (1818) Lord Chief Justice of the Court of King's Bench.]

Solicitor.—Joseph White, esq. Solicitor to the Board of Treasury.

Counsel Assigned for the Prisoner.—Mr. Adam [afterwards Lord Chief Commissioner of the Jury Court, and a Baron of the Court of Exchequer of Scotland]; *Mr. Gurney.*

Assistant Counsel for the Prisoner.—Mr. Moore; Mr. Mackintosh [afterwards Recorder of Bombay.]

Solicitors for the Prisoner.

Messrs. Foulkes and Cooke, Hart street, Bloomsbury square.

The Attorney General said, that as he understood the prisoners meant to separate their challenges, he proposed to proceed to the trial of Crossfield first.

Robert Thomas Crossfield set to the bar.

[*Mr. Shelton*, the Clerk of the Arraignment, called over the Panel.]

Hilton Wray, esq. challenged by the prisoner.

John Anderson, merchant, not a freeholder in the city of London to the value of 10l. a year.

John Vincent Gandolfi, merchant, challenged by the prisoner.

Thomas Dunnage, merchant, excused on account of age.

Peter Pope, esq. excused on account of age.

Abraham Favene, merchant, excused on account of illness.

John Naylor, merchant, challenged by the prisoner.

Joseph Norville, merchant, not a freeholder.

David Jones, merchant, challenged by the crown.

Thomas Latham, merchant, not properly described in the panel.

John Mair, merchant, not a freeholder.

Sir Walter Rawlinson, banker, excused on account of illness.

John Henry Schneider, merchant, challenged by the prisoner.

Claude Scott, corn-factor, challenged by the prisoner.

Rowland Stephenson, banker, excused on account of deafness.

James Atkinson, merchant, challenged by the prisoner.

Richard Heatley, merchant, not a freeholder.

Duncan Hunter, merchant, challenged by the crown.

William Axe, stock-broker, not properly described in the panel.

William Armand, merchant, not properly described in the panel.
 John Greenside, corn-factor, sworn.
 William Ward, coal-factor, challenged by the crown.
 John Prestwidge, hop-merchant, not a freeholder.
 Thomas Fothergill, corn-factor, challenged by the prisoner.
 Henry Roadrisier, stationer, challenged by the prisoner.
 Francis Barstow Nison, merchant, sworn.
 Nathaniel Brassey, banker, excused on account of illness.
 William Morley, sen. corn-factor, not a householder in the city of London.
 Lewis Tessier, merchant, challenged by the prisoner.
 John Read, coal-factor, not a householder.
 Robert Reeve, corn-factor, challenged by the crown.
 Paul Agutter, esq. excused on account of age.
 James Brander, merchant not a freeholder.
 Samuel Brandram, merchant, challenged by the prisoner.
 Charles Hamerton, esq. not properly described in the panel.
 William Hallier, merchant, challenged by the prisoner.
 John Willis, gentleman, excused on account of illness.
 William Walker, sugar baker, sworn.
 David Pugh, grocer, not a freeholder.
 Edward Smeon, merchant, challenged by the prisoner.
 Henry Stokes, merchant, not a householder.
 Percival North, grocer, challenged by the crown.
 Richard Lawrence, sugar baker, not a freeholder.
 Henry Mitton, banker, not a householder.
 Henry Turner, merchant, challenged by the prisoner.
 Edward Brooksope, corn-factor, challenged by the prisoner.
 Alexander Black, merchant, sworn.
 William Robinson, merchant, challenged by the prisoner.
 William Shone, wine merchant, sworn.
 Daniel Shirley, wine merchant, not a freeholder.
 John Garrett, tea-broker, challenged by the prisoner.
 Thomas Higgins, grocer not a freeholder.
 John Hemmet, banker, challenged by the prisoner.
 William McAndrew, orange merchant, not properly described in the panel.
 James Bell, sugar baker, not a freeholder.
 Miles Stringer, spice merchant, excused on account of illness.
 John Sherer, merchant, challenged by the prisoner.
 Joseph Stoward, corn-factor, challenged by the crown.
 Samuel Ibbetson, mercer, challenged by the prisoner.

Henry Isherwood, paper-maker, not a freeholder.
 Windham Knatchbull, not a householder.
 William Ascough, undertaker, challenged by the crown.
 John Addison, linen draper, challenged by the prisoner.
 Thomas Wright, soap-boiler, not properly described in the list delivered to the prisoner.
 Arthur Windus, coachmaker, sworn.
 Richard Clarke, coach-master, not properly described in the panel.
 William Purdy, broker, challenged by the prisoner.
 Edward Penny, glover, not a householder.
 Michael Eaton, hosier, challenged by the crown.
 Timothy Fisher, linen-draper, not a householder.
 Edward Newberry, bricklayer, challenged by the prisoner.
 William Norris, mason, sworn.
 Thomas Loveland, baker, challenged by the prisoner.
 William Lynes, warehouseman, excused on account of illness.
 William Gosling, carpenter, sworn.
 Benjamin Hanson, orange merchant, not a freeholder.
 James Tyers, sugarbroker, not a freeholder.
 Henry Goldfinch, hatter, challenged by the prisoner.
 Henry Thomas Avery, currier, excused on account of illness.
 Nicholas Browning, baker, challenged by the prisoner.
 John Blades, glassman, not a freeholder.
 John Rowbuck, broker, not properly described in the panel.
 Edward Jackson, mans-mercet, not a freeholder.
 Joseph Warner, grocer, challenged by the prisoner.
 Thomas Whipham, silversmith, excused on account of illness.
 John Crutchfield, oilman, challenged by the prisoner.
 William Crutchfield, oilman, challenged by the prisoner.
 Daniel Pinder, mason, sworn.
 Henry Nettleship, gent. not a freeholder.
 James Lyon, lighterman, challenged by the prisoner.
 William Leach, vintner, not properly described in the panel.
 John Turner, linen draper, challenged by the prisoner.
 William Humphreys, senior, grocer, challenged by the prisoner.
 Anthony Brown, fishbroker, excused on account of age.
 Walter Brind, silversmith, excused on account of age.
 Christopher Smith, wine merchant, challenged by the crown.
 Richard Fisher, haberdasher, not a freeholder.

Thomas Ovey, hatter, challenged by the crown.

John Mackenzie, oilman, challenged by the prisoner.

Thomas Jeffries, linen draper, one of the people called Quakers.

William Parker, glassman, excused on account of illness.

Thomas Abbott Green, silversmith, not a freeholder.

Walter West, ironmonger, challenged by the prisoner.

Benjamin White, bookseller, sworn.

Stephen Adams, silversmith, excused on account of illness.

Andrew Abbott, potter, not a freeholder.

John Reid, distiller, sworn.

Phillip Rundle, goldsmith, challenged by the crown.

William Collier, gent. challenged by the prisoner.

John Coe, taylor, sworn.

The Jury.

John Greenside,
Fran. Barstow Nixon,
William Walker,
Alexander Black,
William Shone,
Arthur Windus,

William Norris,
William Gosling,
Daniel Pinder,
Benjamin White,
John Reid,
John Coe.

The Clerk of the Arraignment charged the Jury with the Prisoner in the usual form.

The Indictment was opened by Mr. Abbott :

Mr. Attorney General.—May it please your lordship, gentlemen of the Jury; In the discharge of the very painful duty, which belongs to the situation which I hold, I am called upon this day to address you with reference to a case of a most serious nature, whether it is considered with regard to the public, or the prisoner who stands at the bar.—Gentlemen, the indictment which you have heard read charges the prisoner with the highest offence known to the law of our country, and it charges the prisoner with the most aggravated species of that highest offence.—It charges him with compassing and imagining the death of the king, and with having, for the purpose of carrying that imagination into execution, prepared the means of destroying the person of the sovereign.

Gentlemen I shall have very little occasion, in the course of what I have to offer to your attention, to say much to you upon the law of this particular case; I shall state it to you in the words of a great judge, a man attached unquestionably to the genuine principles of this constitution, whose name has long been revered and will continue to be revered whilst the constitution of the country itself shall endure—I mean the late Mr. Justice Foster—He states the statute of the 25th Edward 3rd, upon which this indictment is framed, and which you probably will hear read and com-

mented upon by great modern living authorities: he states the statute in these words—

“When a man doth compass or imagine the death of our lord the king, and thereof be upon sufficient proof attained of open deed by people of his own condition.”—He states that in the case of the king, this statute of 25th Edward 3rd, has with great propriety retained the rule that the will is to be taken for the deed. With respect to homicide in the case of individuals, the law of this country once was, that even as to them the will should be taken for the deed: that law hath been altered in the case of private individuals; but it remains unchanged with respect to the sovereign of the country, and the reason why the law hath been continued, as it anciently was, with respect to the king, is stated in the book which I have been reading to you, as follows: “The principle upon which this is founded is too obvious to need much enlargement: the king is considered as the head of the body politic, and the members of that body are considered as united and kept together by a political union with him, and with each other: his life cannot in the ordinary course of things be taken away by treasonable practices without involving a whole nation in blood and confusion: consequently every stroke levelled at his person is, in the ordinary course of things, levelled at the public tranquillity. The law, therefore, tendereth the safety of the king with an anxious concern, and, if I may use the expression, with a concern bordering upon jealousy. It considereth the wicked imaginations of the heart to be of the same degree of guilt as if carried into actual execution from the moment”—(And I would beg your attention, gentlemen, to this passage: “From the moment that measures appear to have been taken to render them effectual.”

Gentlemen, God alone can read the heart of man: and the legislature has, therefore, insisted upon this, in every trial between the king and a prisoner indicted, that he shall be attained of open deed by people of his condition: that is to say, that some measures shall be taken to effectuate that evil imagination of the heart, some fact shall be done or attempted to be done, in order to prove to man's judgment that that conception and that imagination did enter into the man's heart.—This measure, proof of which is made necessary by the law, is ordinarily known by the name of an overt-act, and every indictment for treason, as you will hear, must charge that the party compassed and imagined the death of the king, and then it must state, upon the face of it, those circumstances and facts, which are the measures, by which the prosecutor insists that the party has disclosed that traitorous compassing and imagination of his heart.

Gentlemen, the present indictment specifies several such overt-acts. With respect to many of them, conspiracy with others is of the es-

sence of them—with respect to many others of them they are so framed that, if this prisoner is alone guilty, the circumstance that he is the sole person to whom, upon that supposition, guilt could be imputed will be no objection to his being found guilty, if the justice of the case, upon a due attention to the circumstances of the case before a jury of his country, as affecting him alone, requires that he shall be convicted.—I say that circumstance—that he is, in this way of putting the case, the only person guilty, will form no objection to his conviction.

Gentlemen, I state no more upon the law of the case but to add a single word to what I have already mentioned, and that is this observation—that if a jury,—and to this I would humbly beg the attention of the Court, as well as your attention—that if a jury shall be satisfied that the measures, which were taken by the person indicted, were measures in his intention calculated to the end of destroying the king, in his idea effectual for the purpose intended, it cannot be a question which ought to entangle your consciences at all, whether those measures could have effectually executed the purpose with reference to which they were taken.

Gentlemen, I have stated to you that the offence with which the prisoner is charged, is the highest known to the law of England.—I have stated to you that it makes the party, in the case of the king, answerable for the intention demonstrated by an overt-act to the same extent as that in which he would be responsible for the actual execution of that act in the case of a private person.—When I have stated that, I am also to add, that the constitution of the country has provided more security for the person accused in the case of treason, than it has provided for any party, who is the object of accusation in any other case known to the law of England. It has provided in ancient times many of these securities: it has provided many of these securities in times to which the legislature which ordained them did not think proper practically to apply those provisions, which they were enacting for the defence of their posterity, or such of their posterity as should be accused of such offences. In the case of murder, one of the highest offences known to the law of England, the party may be convicted upon the evidence of a single witness: he meets in the court, where he is tried, the jury, whose names are at that moment first known to him; he sees in that court for the first time the witnesses, upon whose testimony the deliverance is to be made between him and the country; to that moment he may be, and he generally is, ignorant even of the names of those witnesses; and one witness credited will convict him. Our ancestors have provided otherwise in the case of treason; they have required (and it is my duty so to state it to you), that the proof should not only be such, as should satisfy the

minds of a jury of the guilt of the prisoner, but that it must be formal proof too, such as the law requires; that is, if an individual to whom every one of you should be disposed to give the utmost credit, upon whose veracity you would pledge your own lives, if an individual witness shall speak to a single fact, though you may believe that witness, you cannot convict the prisoner; there must in treason be two witnesses to convict the prisoner; at least one witness to prove one overt-act laid in the indictment, and another witness to prove another overt-act of the same treason laid; that is, there need not be two witnesses to each overt-act, but one witness to one overt-act and another to another overt-act are required, and are allowed by the law to be sufficient witnesses to convict in a case of treason.

Gentlemen, the individual accused meets the accusation in the face of his country also under circumstances, which form a great protection to him, which I will state to you presently in the words of the same great judge, whose authority I have before cited to you, which do in some degree endanger public justice; and I will state to you distinctly, why I beg your attention to his words upon this part of the case. Gentlemen, the law has required, that in the case of treason, the prisoner should have his indictment for a given number of days before he is called upon to plead to it.—It likewise requires that at the same time, when a copy of the indictment is given to him, a list of his jurors shall be given to him, and that a list of the witnesses, who are to be produced in order to establish the charge, shall be put into his hand. The prosecutor, therefore, meets a person accused of this offence in this situation—a situation new in the law of England till a very late period. I think the trial of lord George Gordon,* was the first which, in the history of this country, admitted the application of the statute of queen Anne, with reference to the point, upon which I am now addressing you; for the legislature that passed this act, did not venture to apply the provisions which I have last stated, to the country, situated as the country then was, but postponed the application of them till a period, which did not arrive, I think, till about twenty years ago.

Mr. Justice Foster, writing upon this statute before these provisions took place, states himself thus:—"The furnishing the prisoner with the names, professions, and places of abode of the witnesses and jury, so long before the trial, may serve many bad purposes, which are too obvious to be mentioned: one good purpose, and but one it may serve: it giveth to the prisoner an opportunity of informing himself of the character of the witnesses and jury; but this single advantage will weigh very little in the scale of justice or sound policy, against the many bad ends

* See it, *antè*, Vol. 21, p. 485.

which may be answered by it. However, if it weigheth any thing in the scale of justice, the Crown is entitled to the same opportunity of sifting the character of the prisoner's witnesses.

Gentlemen, with respect to this matter of the witnesses, we meet to day to try a cause where the prisoner has been in possession of the names of all that can be produced, in order to support the indictment; while, at this moment, the names of those, who are to support the defence, although given in to an officer of the court, are very properly, with a view to do justice to the intention of the legislature, withheld from those who are to prosecute.

Gentlemen, I mention this circumstance for the purpose only of desiring your attention to an observation which I am now about to state to you, in a case of the extraordinary nature, the circumstances of which I have to detail to you. It may possibly occur that I may be obliged to call witnesses in this case, who may be unwilling enough even to state the truth to you upon this subject. You will give, I am persuaded you will, that attention, which the policy and spirit of such provisions as those which I have mentioned, must require from a jury;—I mean a jealous and anxious attention to the testimony, and the nature of the testimony, which every witness, on every side, in this important business, shall lay before your consciences, remembering that the country and an individual meet together, under these disadvantages which I have been stating.

Gentlemen, some of the overt acts, stated in this indictment, charge the prisoner with conspiring with the other parties named in it, Paul Thomas Le Maitre, John Smith, and George Higgins, to procure and provide a certain instrument for the purpose of discharging an arrow, and likewise an arrow to be charged and loaded with poison, with intent to discharge, and cause to be discharged the same arrow, by means of the instrument, against the king's person, and thereby to kill him. The next overt act is, that the prisoner employed a person, of the name of Hill, to make two pieces of wood to be used as models, for the making and forming certain parts of the said instrument, for the traitorous purpose last aforesaid, and did deliver to him a certain paper with certain drawings thereon, drawn and designed as instructions and directions for making such models. There are likewise charged consultations among the parties, and the employment of a man of the name of Upton, to whom this paper was delivered, for the purpose of forwarding the project, and the delivering to him of a metal tube, which was to be part of the instrument. And then the indictment charges again the same overt-acts, leaving out the fact of the consultation about, and the construction of the arrow charged with poison, with intent to kill the king by

means of the arrow; but charging the fact of the fabrication of the instrument of air-gun, for the purpose of discharging it, as it might be discharged against the person of the king, without making the poisoned arrow part of the contents to be discharged.

Gentlemen, before I state to you what I shall be able to do without employing a great deal of your time and attention in this case, I mean the circumstances of it, you will give me leave to state, very shortly, what has passed relative to this matter, before I had the honour of addressing you impanelled in that seat.—There was a person of the name of Upton, whose name occurs upon this indictment, and whose name you will hear very frequently in the course of this trial, who was a mechanic, that lived in Bell-yard, near Temple-bar, who gave an information to the highest magistrates of this country, I mean his majesty's privy council, a considerable time ago, in which he distinctly charged himself, the prisoner at the bar, and other persons whose names occur upon this record with the offence, the charge relative to which you are this day to determine upon.

Gentlemen, I before stated to you that the law of England requires two witnesses in the case of high treason; they must be two credible persons, and one should have to lament, certainly, if one of them was an accomplice in the fact. It became necessary to scrutinize, with reference to this provision of the law, this mysterious matter, as in some parts of it perhaps it may appear to you to be, very diligently, and very accurately. The prisoner at the bar, charged with this offence, thought proper, as I shall prove to you as I am instructed, to fly from the accusation, and not to meet the justice of his country. The other persons, whose names occur in this indictment, were apprehended. That species of diligent examination was given to the subject, which it was the duty of these great magistrates to give, in a case which aimed directly at the life of the sovereign. In the course of this business those persons, so apprehended, were discharged upon bail—after the discharge of those persons upon bail, Mr. Crossfield, the prisoner, came from France to this country, under circumstances which it will be my duty to state to you, and accompanied with a body of evidence upon this subject to which it will be necessary, when I do state them, that you should give particular attention; and which made it incumbent upon those who have matters of this sort to direct, to propose to a grand jury of the country the whole of the case, with a view that they should determine, in the first instance, whether this charge ought to be submitted to that jury of the country which is to day to decide upon it.

Gentlemen, this business, if looked at with reference to all the circumstances which affect all the parties in it, is extremely complicated: it was carried in the form of an indictment before a grand jury of the country.

Upon principle—whether that principle was founded in the law of the country or not, it is not material for me at this moment to consider—but from principle, they refused to permit the evidence in this business to be laid before them in the order which had a natural tendency to make that evidence intelligible; they took the whole matter into their own hands, and, examining all the parties upon the subject, and particularly examining that person of the name of Upton, whom I have before described to you as an accomplice, they found the bill against all the prisoners.

Gentlemen, unwilling as any person would have been, undoubtedly, to have tried this cause upon the credit of Upton alone, or of Upton confirmed by any other individual, or confirmed even by strong circumstances, it would unquestionably have been my duty, if it had been in my power, to have called that person here to-day, to have given his evidence to you, but withal to have stated, as far as it became me, and under the correction of the wisdom which presides here, that his evidence ought to have been received with great jealousy and with great attention; that you ought to protect, against such a witness, a prisoner, put upon his deliverance before you, till your unwillingness to receive his testimony had been subdued by a conscientious conviction, arising out of all the circumstances of the case, not only that he was as guilty as he admitted himself to be, but that other persons represented by him to be equally guilty with himself actually were so.

Gentlemen, it has however happened, whether fortunately for justice or not I will not take upon myself to determine, because in my situation and as a man I do feel that, if on the part of the public I have to regret that this man's testimony cannot be offered to you, on the other hand, that I ought to remember, that if this man's testimony could have been refuted by any circumstances established on the part of the prisoner, or if by any examination addressed to him by the prisoner, or by others, the innocence of the prisoner could be established, it would be undoubtedly a public duty to produce such a person;—he ought to be produced, with a view that guilt might be detected if it does exist, and, on the other hand, that innocence may be established if it has been improperly accused. Since the bill however was found, it has happened that by the act of God that man has ceased to exist: he is dead; and I shall have occasion probably, in the course of what I have to offer to your attention, to prove that circumstance. It is very remarkable that—as I should unquestionably have asked you, if I had had that person to have produced as a witness at the bar this day, not to convict the prisoner upon his evidence, unless you had been satisfied by his evidence as confirmed by other testimony in the cause of the prisoner's guilt—I say it happens very remarkably, that I have a case to lay before

you, in which I may say in the outset, as I should have been disposed, if he had been here, to have said in the conclusion, that you may lay his testimony out of the case from the beginning to the end of it.

Gentlemen, I shall proceed now to state to you the circumstances of this case, as they affect the prisoner at the bar, Mr. Crossfield. It was in the month of August, I think, 1794, that the charge was first brought forward by Upton; and being very unwilling (though it is both a delicate and a difficult task to avoid it) to make any such direct representation to you as he made to others upon the subject, I had better, perhaps, proceed to state to you the effect of that representation, by mentioning to you the facts which I am instructed to say the witnesses whom I shall call will prove against the prisoner, than detail to you what Upton personally represented with respect to any one of these facts.

Gentlemen, there are two questions of fact, which will deserve your particular attention. The first is, whether the prisoner at the bar really was engaged in a concern to fabricate such an instrument as is mentioned upon this record; and the next question for you to try will be, whether, if that be demonstrable and clear, it is or is not equally clear that that instrument, which he was so engaged in fabricating, was fabricated with the intent and for the purpose charged in this indictment—that is, to compass what he had imagined, the death of the king. With respect to the former of these facts, you will find by a witness whom I shall call to you, of the name of Dowding, that in September, 1794, upon the 8th of that month (and I should here advise you, that some of those witnesses whose testimony I am about to state do not know the individuals, or some of the individuals, who applied to them, but it will be distinctly proved to you by other persons that will be called who those individuals were), a person of the name of Dowding, who is a journeyman to a Mr. Penton, that lives in New-street square, and who is a brass-founder, will inform you that, upon the 8th of that month, in the afternoon, three men—whom I now state to you were Upton, who is dead; the prisoner, Mr. Crossfield; and a person of the name of Palmer, who will be called, came to his master's shop; that they asked him for a tube three feet long, and of five-eighths of an inch diameter in the bore: you will find he states the dimensions to be the same as other brass founders to whom they apply—five-eighths of an inch in the bore, and it was to be smooth and correct in the cylinder in the inside. The witness will inform you, if I am rightly instructed, that he showed them a piece of a tube, and asked if that would do with respect to the size of it; that they informed him it would do, but that it must be thicker, in order that it might be smaller in the bore; the expense of it they seemed anxious about in their inquiries: the expense

he stated to them in general would be high, but what would be the particular expense of it he could not take upon himself to state: he inquired what they wanted this tube for; and you will find, if I am rightly instructed with respect to his evidence, that the answer given to that was, that the purpose for which they wanted it was a secret, and that they could not disclose it to him.

Gentlemen, they applied upon the same day to another person of the name of Bland (the former not being able to supply them with the article that they wanted), who is a brass-founder at No. 40, Shoe-lane, Fleet-street: there were but two of them that came originally to him, and you will be satisfied that they were Upton and the prisoner. They asked for a tube, for a pattern to make another by: after they had asked for this tube, Palmer came in. This witness not being able to supply them, you will find they made another application upon the same day to a person of the name of James Hubbard, who lives in Cock-lane, Snow-hill, and is likewise a brass-founder; he lives in the shop of a person of the name of Michael Barnett, to whom he was apprentice: and upon their addressing a question to him similar to that which they had addressed to the witnesses whose names I have before-mentioned, he referred them to a person of the name of Flint, who is a man in the same shop, and who will likewise be called to you; and he will inform you that they asked him also for a tube; the barrel, I believe, was to be five-eighths of an inch in the bore, and about the eighth of an inch in thickness; that they proposed to finish it themselves, if the witness would cast and bore it: the witness told them that he must have a pattern; and then some conversation passed with respect to this pattern. They were very anxious to know, as you will find from his testimony, how long it would be before this barrel could be made: he gave them an answer upon that subject: and you will hear under what circumstances they parted with him. After these applications had been made to these several brass-founders, Upton and Crossfield, the prisoner at the bar, applied to man of the name of Hill, who will likewise be called to you, Palmer being also in their company; and the evidence that Hill will give you is this—that Crossfield produced to him a paper, which I have now in my hand, which contains the model of part of an air-gun; that is to say, it contains a drawing, by which drawing Hill, whose business was that of a turner in wood, was to fabricate the wooden part of the instrument. Hill, you will also find, asked them what they wanted this instrument for: they did not inform him that it was a secret; but they told him that it was for an electrical machine.

Gentlemen, this paper will deserve your very particular attention; because I have reason to believe that you will find not only that

this paper was delivered by Mr. Crossfield to Hill, but that that part of the writing upon the paper, which states the dimensions of the instrument, is in the hand-writing of Mr. Crossfield. Hill, in consequence of this, following the drawing, turned some of the wooden parts of the model, a part of which I have now in my hand; and which it will be proved to you he carried, according to his orders, to Upton, in whose possession it will be proved that this part of the wooden model was found, as well as the tube, which I have now in my hand. It will be material for you to give your particular attention to these circumstances by-and-by.

Gentlemen, besides all this, it will likewise be proved to you, that there was in the possession of Upton another drawing, containing models of the instrument which we have charged in the first part of the indictment was to eject an arrow for the purpose of destroying the king; and when I have to state to you by-and-by the conversations of the prisoner Crossfield which will be proved with respect to the tube and the arrow, and the nature of the instrument, you will see the materiality of the circumstances to which I am at present calling your attention. The other paper I have in my hand; and it contains different parts of this intended instrument. There is one part of it, to which you may think your particular attention is due; because, if I prove the circumstances that I have already stated, it will be incumbent upon the prisoner, I apprehend, more particularly after the evidence which I have to offer to you with respect to the intent, to give you some evidence for what purpose such an instrument as this was actually constructed. Here is a drawing of the arrow, which is of the form that you may see perhaps by my holding the paper up to you in this manner. It is like a harpoon, and it has this peculiar circumstance about it, that it is so formed, that when it presses against any hard substance the two forks of it compress together, enter into the substance, and there is a hole at the end of it, which would then emit some substance, which it is calculated to hold.

Gentlemen of the Jury, it will also be proved by another witness whom I shall have to call, of the name of Cuthbert, that Upton and the prisoner went to him some time in the month of August, 1794, for the purpose of looking at an air-gun that Cuthbert had. Cuthbert appears to have been an acquaintance of Upton's. You will hear from the witness himself what was the conduct of the prisoner at the bar with respect to that air-gun in the possession of Cuthbert: he examined it; he handled it; stated that it would do very well for the purpose; and after a conversation of this sort they left Cuthbert.

Gentlemen, it may probably be proved, if it be necessary with respect to the case of this prisoner, that some of these instruments which I have been stating were in the hands

of the other parties whose names are upon this record; it is also possible that papers, material to establish the facts alleged against some of these parties, may be thought, according to the course which this cause may take, necessary to be produced in evidence upon this trial; but, without detaining you with respect to the particulars of the evidence which applies to other persons, I think, if I prove the facts that have been already stated as against Mr. Crossfield, and if you shall find that there is distinct evidence of the intention with which he was engaged, in drawing these models, and providing for the fabrication of these instruments, that there can be very little doubt indeed in respect of his case.

Gentlemen, when the other parties were apprehended, I have before told you that Mr. Crossfield absconded. I believe I shall be able to prove to your satisfaction by a witness whom I shall have to call to you of the name of Palmer, whose name I have before mentioned, some of the circumstances I am now about to open to your attention, as well as a great many of the circumstances which I have already stated.

Mr. Crossfield usually lived in London. The first place in which he hid himself, after this charge was made, was Bristol: he returned afterwards from Bristol to London: and from London he went to Portsmouth, where he engaged himself on board a ship called the *Pomona*, which was employed in the South Sea Whale fishery. I probably need not mention to you gentlemen that the voyage of a ship, engaged in that commerce, is of a considerable duration—sixteen or eighteen months I believe—being a surgeon, he hired himself at Portsmouth on board that vessel. He went usually by the name of doctor: it will be proved to you by witnesses who come forward in this business under circumstances, that entitle them to great credit, at least so I submit to your consideration, that this vessel sailed from Portsmouth to Falmouth; that during the voyage from Portsmouth to Falmouth you will find, if I am rightly instructed, with respect to the representations that the mariners on board this vessel have made, Crossfield conducted himself with the greatest decency and propriety; his name however was unknown. They sailed from Falmouth, and after they got out to sea in the progress of their voyage, Mr. Crossfield informed the witnesses who will be called to you who he was. You will hear the account that he gave of himself, the account that he gave of the part, that he had in this transaction, the circumstance of his relating his escape, and his declarations that, if it was known that he was leaving this country in that vessel, the government would probably send a frigate after him, that he states in the most distinct manner, even before the capture of the *Pomona*, to some of the witnesses that will be called to you, circumstances of his own connexion and transaction in the business, which

I have been opening to you, with express and clear and pointed reference to these models, to the tube, to the arrow, and to the other particulars that I have opened.

Gentlemen, in the course of the voyage this vessel was taken by a French Corvette, the *La Vengeance*: she was carried into Brest: you will hear from the witnesses the conversation that passed between them and Mr. Crossfield, when this capture took place: the satisfaction which he expressed that he had got even out of that situation of danger which he conceived himself to be in whilst he was a part of the crew of any English ship: the satisfaction that he had, in having been captured by a French frigate, and taken into that country where he would be safe. You will hear what the whole of his demeanor was whilst he remained on board that French ship which captured him, and when he was in the harbour of Brest. He was first removed, in consequence of conduct, the details of which will be given by the witnesses as connected with this business, from the French Corvette into another vessel called the *Elizabeth*, which was an English ship, that had been captured by the French, and out of her into another vessel, which was called the *Humphries*, and there are persons in respectable situations from among the prisoners, that were detained in each of these vessels to state to you evidence which, without detailing it to you particularly, I think can leave, if it is entitled to any credit, no doubt upon your minds that, if Mr. Crossfield was concerned in the fabrication of these instruments, or the drawing of these models, the intent, with which he was concerned in that fabrication and that drawing, was most distinctly the purpose and the intent charged in this indictment, *i. e.* the intent to kill the king.

Gentlemen of the jury, you will not be surprised if you hear from witnesses, whose testimony will be given to you, that Mr. Crossfield, being carried into Brest under such circumstances as I have stated, was rather in the situation of a superintendant over the English prisoners on behalf of the French, than as a companion with those unfortunate persons who had been captured by the French, and were detained in their prison ships there. I have reason to think that you will also find that it was his project either to remain there or to go into Holland. In a course of time however cartel ships were to come over into this country; with what intention Mr. Crossfield came over into this country it is not for me to examine nor to insinuate. You will collect this yourselves from the testimony which those witnesses will give you; but you will hear circumstances which are remarkable enough—that Mr. Crossfield was constantly in company with the commissary of the French prisoners—that he will appear, according to the testimony of one of the witnesses, to have gone ashore a day or two before these cartel ships left Brest, in order to meet a member

or members of the Convention; that shortly before he left that country he took the name of Wilson: that in his own hand-writing he was mustered among the prisoners by the name of Wilson, as having been captured by the *La Vengeance*, not out of this vessel called the *Pomona*, but out of a vessel called the *Hope*; for what purpose he changed his name, or for what purpose he changed the name of the vessel in which he was captured, it will be for you to determine, when you have heard the whole of the evidence.

The witnesses will also state to you the circumstances which took place when the prisoners were put on board the cartel ships, and you will see that it was familiar to the commissary of the French prisoners, that this man should pass by the name of Wilson, as having been captured in the *Hope*, and that under that false name he should come over to this country. Gentlemen, you will also hear the witnesses inform you that in the course of the voyage between Brést and this country, Mr. Crossfield distinctly desired one of them, the only one I believe who was in the vessel in which he came over, not to state his name, and not to state those circumstances of conduct and the declarations which had taken place whilst he and that witness were detained together in the harbour of Brést. They landed I think at Fowey in Cornwall, in the neighbourhood of Mevagissey. Some of these seamen, the witnesses, who are persons in respectable situations on board ships, mates and officers, thought it their duty, under a very different impression with respect to Mr. Crossfield's conduct, than perhaps that which they might have had if they had known what had been passing in this country, but yet under an extremely serious impression in their minds, to go instantly to a magistrate to inform him what had passed in France, with respect to the conduct of this person. In consequence of that charge made by persons, who knew nothing of what had been passing in this country, except so far as the circumstances that had been passing in this country had been related by the prisoner himself, the prisoner was apprehended; being apprehended, it will be in evidence before you that, as he went before the magistrate from Fowey or Mevagissey to the county gaol, that he intimated to the persons who were conducting him there, that it might be for their interest to permit him to escape: he stated to them that a sum of five shillings was all that they could expect for the execution of the duty, which they were then upon: that he had the means of giving them much more. These persons will state to you the whole of the conversation which passed, and on the suggestion I think of one of them that the plan would not answer the purpose of Mr. Crossfield, because the driver would still be to be disposed of, and asking the question what would become of the post boy, the answer given to that was that the post boy might be

disposed of by the use of a pistol which one of these officers had.

Mr. Crossfield was brought up before his majesty's privy council, and he was committed to the Tower, and in consequence of all this additional testimony, which has immediate relation to Mr. Crossfield, but which connects itself with the circumstances which have before been stated with respect to the other prisoners, it became a matter of duty to submit the whole of the case to a grand jury of the country. They found the bill, the prisoner's deliverance upon which is now before you.

I have studiously forbore to mention several circumstances which relate more particularly, and more especially to other persons whose names are upon this record. If I prove this case, as I am instructed to say I shall prove it, and if I prove it as I have opened it to you, I apprehend there can be no doubt of this prisoner's guilt. If that be the result of the testimony which is given to you, gentlemen, though it is a painful duty, it is a duty absolutely incumbent upon me, to ask at your hands, on the behalf of the country, the verdict of GUILTY. On the other hand, if you are not satisfied that the offence of high treason according to the statute, is proved by evidence according to law, against the prisoner, certainly you do no more in that case, than your duty to your country requires, in acquitting the prisoner.

You have before you a case of great importance. It is a case, which I am sure you will listen to with great attention. I am confident that you will decide it with unimpeachable integrity, and in your verdict, whatever it may be, I hope the country will feel a perfect satisfaction that they have had the case deliberately considered, and honestly decided upon, by the twelve men, to whom I have the honour to address myself.

Lord Chief Justice *Eyre*.—Mr. Attorney General you do not open any particular conversation upon the point of connexion of this instrument with the use that you suppose was meant to be made of it; if you in your judgment conceive that the conversation that did pass will support that connexion, I shall be so perfectly satisfied with that declaration, that I think we may go on; if it were otherwise, an observation would occur upon the case as you have opened it.

Mr. Attorney General.—I will state why I did not mention the particulars of the conversation, I think it is better the witnesses should state the conversation in their own way of stating it, than that counsel should undertake to make a representation of it; I understand myself to be pledged to the Court, to this, that the conversation was the most direct that can possibly be stated for the purpose of proving an intention as connected with the instrument.

Lord Chief Justice *Eyre*.—I am perfectly satisfied with that declaration.

Mr. Attorney General.—Yet if the Court

think it the better way that I should state in detail the conversation, I am perfectly ready to do it. "Damn me I was the ringleader of the three that intended to blow a dart at his majesty."

Lord Chief Justice Eyre.—You have said quite enough for my satisfaction.

Mr. Attorney General.—My reason for not stating the particulars of the conversation which this man had with each of the witnesses, was this, and no other; I could have represented generally the nature of the conversation, but I have collected an opinion in which I may be wrong, that it is more just towards the prisoner, after generally stating to a jury that conversations were held of such and such an effect, to leave the detail of the particulars to the witnesses, that the witnesses' account of it may make the due impression upon the mind of the jury, rather than to make a representation myself, where if I happen to be mistaken, I may create a prejudice in the minds of the jury.

EVIDENCE FOR THE CROWN.

John Dowding sworn.—Examined by Mr. Law.

In the month of September, 1794, where did you live and work?—I worked with Mr. Penton, in New-street-square, No. 32.

What is Mr. Penton's business?—A brass-founder.

Do you remember being in his employment on the 8th of September, 1794?—Perfectly well.

Do you recollect on that day any men coming to his house who were not known to you?—I was called down on the 8th of September, by the clerk; when I came down into the counting-house, there were three men standing there.

Do you recollect any thing particular of the person of one of them?—One of them was a lame man.

Did you see that man afterwards so as to enable you now to say who that lame man was?—Yes.

Who was that lame man?—Upton; one of the others was a tall man.

Do you now know who the other two men were?—Not to my knowledge.

If you saw them again should you recollect them?—I cannot say.

What did they ask you for?—When I came into the counting-house they asked me if I could make them a tube; I asked them what sort of a tube; they said it was to be three feet long, the eighth of an inch thick, five-eighths of an inch inside the bore, and to be seven eighths the outside; it was to be quite perfect, and the inside was to be quite a smooth cylinder.

Did you, upon that, show them any part of a tube?—I asked them what sort of a tube it was to be; they asked me what the price would be; I told them I could not tell; they asked me if I could tell to a few shillings; I

told them I could not, as my master was not within; then I showed them a piece of a tube.

Mr. Law.—Was that the piece of tube you showed them? [showing the witness a brass tube].

Witness.—It was a piece of a similar size; they said that would do if it was smaller inside, that it was of the right size the outside, but it must be thicker, and then the bore would be less.

Did you ask what it was for?—I did not then; they asked me then if I could not tell them nearly what the price would be; I told them no, I could not, because it was an out-of-the-way job, and I must make tools on purpose to make it; that I must make a tool to draw it on, to make it smooth inside.

Did you ask them what was to be the use of it?—I told them if they would tell me the use of it, I could be a better judge how to make it, and, perhaps, could make it better for their use; they answered it was a secret; it was Upton made answer it was a secret, and the others seemed to agree with him, they all seemed to be in one voice, saying that it was a secret.

Did you undertake the job?—I did not.

Did you give any reason why you would not undertake it?—Yes. When I was talking of making things for it, he asked me if I knew what the price of it would be, I said I could not tell the price of it.

Relate what more passed when you were present?—When they asked me about the price, I told them it was rather an out-of-the-way job, and that to make it quite parallel in the inside, I must make tools on purpose to make it; they asked me how much the expense would be; I told them I could not tell; they asked me if I could not tell to a few shillings, I said I could not, that my master was not within, and I was very busy myself; I told them at last that it was a job not worth while undertaking as I was quite busy; I told them then as I said before, that if they would tell me the use of it I could be a better judge how to make it, and, perhaps, could make it better for their use; they answered me it was a secret. Then they produced a piece of tube that they had bought before at our house, and had some money returned, which was, I think ten-pence; the money was returned to Upton. Whom did they deliver that back to?—To me; but the clerk returned the money.

What is his name?—Mason; but he is not in our service now; it was such a bit of tube as this, it was of the same size.

Did they all seem to be concerned in the same business?—They appeared to be of the same sort.

You stated, that what one said, the rest assented to?—Yes; they seemed to be the same company; what one said the others stood to; but as to taking my oath to the people I cannot, if I was to see them perhaps.

What passed after returning the tube?—Nothing else passed, they went away.

John Dowding cross-examined by Mr. Adam.

This you say passed on the 8th of September, 1794?—Yes; our books will show it.

Three persons came together?—They were together when I came down; I cannot say whether they came together into the counting-house.

The only one of these whom you can speak to positively is Upton?—I never saw any of the rest.

You never saw any of the others either before or since?—Upton I have seen since. I can swear to him.

But the two others you had not seen before nor since?—Not to my knowledge.

You talk of a tube which they had got at your house being brought back, and ten-pence being returned to them; what do you mean by that? do you mean the same three persons?—There was but one person returned it, all three could not join hand in hand.

Were all the three persons together, at the time of returning it?—They were as close as I am to this gentleman next me.

When did they get the tube that they returned?—I cannot say.

How can you tell that they they got that at your house?—The clerk returned the money to them.

You cannot say any thing of your own knowledge, about the tube that was returned? There was a tube got from your house?—Yes; or we should not have returned the money to them.

Got by Upton?—I cannot say which of them got it.

The money was returned at that time?—It was.

You say Upton was the person who spoke?—He was the person that spoke the most, the rest joining sometimes.

Do you recollect any thing particularly that Upton said?—He was the person who spoke to me when I came down, and asked me if I could make a piece of tube.

Then you discoursed about the price of it?—Not then, it was afterwards.

Did you ask any particular price?—I asked no price at all.

Did you say it would be a thing of great cost?—I said it would be expensive.

When they asked how much expense, did you say how much?—No.

Then you gave them no idea of whether it would cost them a guinea, five guineas, or ten guineas?—Being a journeyman I could not tell.

The discussion about the price was quite general?—Yes.

Can you swear, positively, that these persons were present during the whole conversation between you and Upton?—I can swear positively, that there were three in the room all the time.

Are there not women employed in your house in lacquering brass?—There are,

Does the operation of lacquering brass go on in the same place, or in an adjoining one?—In the same house.

In the same apartment?—Not in the same room.

Therefore, if any of these persons went to a woman that was lacquering brass, of course they must have been in a different apartment from that in which the conversation is supposed to have passed with you?—They did not go out while I talked with them, they might before I came down; to my knowledge they did not; I did not see any of them go there.

You cannot speak to the persons of the other two, you never saw them before?—Not to my knowledge.

Nor since?—Not to my knowledge.

And the thing went off entirely upon your saying, it could not be done but at some certain expense?—Yes.

Of the three, Upton was the person who spoke most?—Yes.

I think you said, that when it was told you it was a secret, it came from Upton's voice?—I did not hear them all, but I can swear Upton said that; but they were all just together.

The two other persons did not say any thing that you can charge your memory with?—No, I cannot.

Did they say any thing about its being a secret?—It was just as they were going away it was said it was a secret.

And its being a secret came from Upton's voice, and not from either of the others?—I cannot swear to any other person's voice, they all seemed to join together, but Upton's voice I heard in particular.—As for the other voices I cannot tell.

Joseph Flint sworn.—Examined by Mr. Garrow.

You are, I believe, a brass-founder, in Cock Lane, Snow Hill?—Yes.

Do you remember being applied to, in the month of September, 1794, to attend any persons in respect to a brass tube that was wanted?—I do.

Can you recollect what day of the month it was?—No.

What day of the week?—No.

Do you recollect what hour of the day?—It was some time after dinner, I believe.

Do you remember in what part of the month the anniversary of his majesty's coronation falls?—On the 22d of September.

Was it before or after the 22d of September?—Being called in January, 1795, I made an inquiry among the men.

Mr. Garrow.—Do not tell us any thing that is the mere effect of information from others. But have you, after an inquiry, been able to satisfy your own mind in what part of the month it was?—Not at all.

What time of the day was it?—I believe immediately after dinner.

You were called by your servant to attend

to these persons?—By my apprentice, James Hubbard.

How many people came to you?—Three persons.

Did you make any observation upon the person of any one of them?—One I observed to be a lame man.

Did you observe whether he had any iron on or not?—No; I observed one to limp as he was going out at the door.

Relate what passed between you and those persons.—They asked, first of all, for a long pistol-barrel; I produced a musketoon-barrel to them; it was observed that would not do, they did not want it plugged up at the end; from that I observed, that I apprehended it must be a straight cylinder that they wanted; they said it was; that it must be about five-eighths of an inch diameter in the bore, and the eighth of an inch thick; and they said, if I would cast it, and bore it, they would finish it themselves. I told them, I should not undertake to do it without they brought a pattern; one of them observed, would not a rocket-case do; I said it would, if they plugged up the end.

That was for a model?—Yes.

What was to be the length?—There was no length specified at that time; they went away after that. I believe one of them asked how long it would take making, to which I answered about three days.

During the time these persons were with you, did they all take a share in the conversation, or was it confined to any one of them?—The lame man seemed to be the principal.

Did the others interfere in the course of the conversation?—I know it was not the lame man that asked me as to the time when it might be done.

In general it was the lame man that conversed with you upon the subject?—In general it was.

I believe, since the time of this conversation, you have seen a person of the name of Upton?—I saw him in September, 1795.

Did you, when you saw him then, recollect having seen him before?—I did not.

Did you know whether he was the lame man that conversed with you?—I cannot say.

Is that all you know upon the subject?—Yes.

Joseph Flint cross-examined by Mr. Gurney.

When you were called down, you say, these persons were in your shop?—Yes.

Who was the person that spoke to you first?—I believe it was the lame man.

Do you recollect any thing that either of them besides the lame man said, except asking as to the time it would take making?—There was something respecting a rocket-case, but I cannot recollect now what it was.

Every thing else passed between you and the lame man?—Yes.

Joseph Flint re-examined by Mr. Garrow.

Did the question with respect to the time that would be occupied in doing the job relate to that about which the lame man had been conversing?—Yes; the time it would take to make the tube.

Of which the other had been speaking?—Yes.

Were you examined before the privy council?—Yes.

Did you see Upton there?—I saw him in September, 1795.

Are you able to say with certainty whether Upton was the person with whom you conversed?—I cannot say that.

Thomas Bland, sworn.—Examined by Mr. Wood.

What is your business?—A brass-founder. Where do you live;—At No. 40, in Shoe-lane, Fleet-street.

Do you remember any body coming to your shop in September, 1794?—I do, very well.

Can you tell what time in September it was?—I cannot tell the day.

Was it in the beginning or the end of the month?—I cannot say.

How many persons came?—First two men came, and in five minutes one man came to inquire after these two men.

Lord Chief Justice *Eyre*.—Do you mean that one man came in while they were there, or after they were gone?—After they were gone.

Mr. Wood.—What did the two men come for?—They asked for a tube or a barrel; I told them it was not in my line of business; if they wanted a barrel they must apply to the clock-makers, or if they wanted a tube they must apply to those that draw tubes.

Did they say what they wanted it for?—No; they went away, and then another came and asked for the two gentlemen.

Do you know who that man was?—I think the third that came in was Peregrine Palmer.

That was all that he said?—Yes, to the best of my knowledge, they were gone down the lane, he went after them.

Thomas Bland cross-examined by Mr. Adam.

Do you know Palmer?—I have seen him.

Did you know him at that time?—I did not.

How long after was it before you knew Palmer's person?—I was never acquainted with Palmer; I saw him before the privy council, they told me his name was Palmer; I said, to the best of my knowledge, that was the third man that came to inquire for the other two.

You do not know who the other persons were?—One was a lame man.

They staid but a few minutes?—A very few.

And you did not supply them with any thing of any sort?—Nothing at all.

David Cuthbert sworn.—Examined by Mr. *Law.*

Where do you live?—In Graham-court, Arundel Street.

You are a mathematical instrument maker?—Yes.

Do you remember calling upon Upton at any time?—Yes, very well.

What led you to call upon him?—I called upon him on purpose to subscribe a little money for the wives and children of those people that were in prison under suspicion of high treason.

Do you remember at that time having any conversation with him?—Very little at that time.

Does that little dwell upon your memory?—It was so insignificant that I took no notice of it:—I do not know what passed at all the first time; the second time I called upon him on purpose to know how the subscription went on; instead of answering concerning the subscription, he answered me concerning the Corresponding Society.

We will not go at large into that.—Was there any thing that led to the production of any instrument?—No such a thing.

Do you remember calling upon him during Bartholomew fair?—I had given him an invitation when I first called there, seeing he was a watch-maker, to come and look at an engine of mine, which I thought very likely might be a treat to him, as being in that line; it was rather out of the way, as such; he did come; that was nearly about Bartholomew fair time; the distance between the times that I had called on him and that time I cannot well determine, but the way that I know that he called upon me at Bartholomew fair time was, a son of mine was lying ill at that time, and I remember very well he was making an observation——

We must not hear what your son observed to you; but, when you saw Upton, do you recollect having any particular conversation with him about the power of air?—Yes, exactly so; he saw an air-pump lying in my shop, I explained it to him in the best manner I could; I showed him an air-gun, and explained it in the best manner I could.

After having explained it to him, did he come again to look at this air-gun?—He did, next day.

Did he come alone?—No, there was a man with him.

Do you recollect any thing particular about the man who came with him?—No; Upton had displeased me in his conversation in the second interview I had with him, and therefore I neither liked him nor his acquaintance.

Did you observe any thing particular about the hand of that person?—No; the gentleman that came with him told me he was very fond of shooting, and that he had lost some of his fingers by the explosion of a gun; but whether he had or had not, I do not know, for I

did not look at his hand; I was rather disgusted with Mr. Upton as I said before, and I did not pay any regard to him nor his acquaintance.

But he said his hand had received an injury by the explosion of a gun?—He did.

Did he handle the gun, or what did he do?—He viewed it, and said it was a handsome piece.

Did he apply to you to do any job for him.

—Upton asked me if I wanted a job, I replied I had got more business than I could do. The person who was with him was by at the time when he asked you to take this job?—The person that was with him was on the outside of the door and he was in the door-way, it was just as he was leaving the house.

That man is the person who handled the air-gun?—He did.

And praised it?—He did as a handsome piece, which it really was.

Had you any conversation with him about the properties of air?—Not a word, I was at dinner—I did not get up from my seat all the time they were there, till they were just a going, and that was merely because I thought they stopped too long.

Have you seen the man who came with Upton any where since?—Never in my life, nor I don't think I should have known him six hours or three hours after he left my place, I took so little notice of him.

You had so great a dislike to Upton that you would not let yourself know the persons that came with him?—I did not take notice of him, nor I do not know that I should have known him if I had met him in the street a minute after.

Did you see any person afterwards with Upton before the privy council?—No; I never saw Upton at all at the privy council.

Did you see any person before the privy council who had lost any of his fingers?—Not that I know of; I was at the privy council when Mr. Dundas presided, and there was a man of the name of Dennis, a sailor, in the lobby; at the same time a man came out, he said there he goes; I asked who? why, said he, Crossfield; said I do you know him? yes, said he, damn his eyes, I would know his ashes was he burnt, or any such damned rascal as he was; so I understood that to be the man.

I do not ask you to declarations of other people; but I ask you whether you did not see a person who had a defect in his fingers, where the privy council were sitting?—No; I took the man that came with Upton to me, to be a taller man—almost as tall as Mr. White.

David Cuthbert cross-examined by Mr. *Gurney.*

Do you know in what part of the month of September Bartholomew fair is held?—Somewhere about the 9th I suppose—it is all supposition, for I do not know.

You say, yes, invited Upton to come to your house to look at an engine of yours, which you thought might entertain him?—Yes.

Having an air-pump in your shop induced you to talk to him about the properties of air?—Yes.

Had he asked you any thing about the properties of air before you introduced the subject?—I do not think he did.

Did he appear at the time to be conversant with the properties of air?—I do not think he was.

And therefore he asked you for the purpose of enlightening his ignorance?—Yes.

Mr. Law.—Was this at the beginning of Bartholomew fair, or when?—I cannot tell.

Mr. Peregrine Palmer sworn.—Examined by Mr. Garrow.

I believe you reside in Barnard's Inn?—I do.

You are an attorney by profession?—I am.

How long have you been acquainted with the prisoner Crossfield?—I believe about fifteen or sixteen years.

What is he by profession?—He is a physician by profession.

Where did he reside?—He has resided at a number of places since I first knew him.

Did he reside in London in the latter part of the time during which you were intimate with him?—He resided in Dyers-buildings, Holborn: that was the last place I knew him live in.

Were you very intimate with him?—Yes; there was a great intimacy between us.

Did you belong to any club or society of which he was a member?—Yes.

What might it be?—I suppose you allude to the Corresponding Society. I did belong to several societies of which he was a member, among others I was a member of the London Corresponding Society.

Lord Chief Justice Eyre.—Was he also a member of that society?—I do not know whether he was or not; I have seen him there.

Mr. Garrow.—I understand you to have answered to my first question, that you supposed I alluded to the Corresponding Society; I ask you upon your oath have you any the least doubt that he was a member of that society?—I have not.

You have good reasons to know—You were a delegate were not you?—I was at one time.

And a chairman of the committee?—I scarcely know what you mean by a chairman.

I ask you upon your oath whether you were not a chairman of a committee of the London Corresponding Society?—I consider a delegate as a kind of a chairman.

Did Mr. Crossfield attend the meetings pretty regularly?—I believe I may have seen him there about three or four times; I cannot tell the exact number at this distance of time.

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Was he of the same division with you?—Yes.

I ask you upon your oath, did not he attend very regularly?—I have seen him there several times.

Was not he a regularly attending member?—I have seen him there frequently, three, four or five times, I believe, I cannot tell the number of times at this distance.

Do you know a person who was called Upton?—Yes.

Do you remember in the month of September 1794, accompanying the prisoner Crossfield to Upton's house?—Yes; I do.

About what time in the month was it?—In the beginning of the month; I cannot tell the day.

Did you and Crossfield accompany Upton to any place?—Yes.

Where did you go to?—A house; I do not know whether it is in New-street or in New-street-square.

In the neighbourhood of Gough-square?—Yes.

Was it a house of any trade or business?—I believe it was a brass-founder's.

You and Crossfield and Upton went there together?—Yes.

What passed at the brass-founder's when you were so in company?—I know nothing of what passed; Upton had some business there as I understood.

I am asking what passed at the brass-founder's when you were present making one of the company, and I desire you to state it upon your oath?—I have no recollection of any thing that passed there.

Mr. Garrow.—Attend to what you are about, and speak the truth.

Witness.—I know what I am about, and shall speak nothing but the truth.

How long were you in company with Crossfield and Upton at the brass-founder's in New-street?—A few minutes.

You can recollect what passed?—I can recollect nothing at all about it.

That will not satisfy the Court, I should think?—I will say the truth, I can say no more about it.

Was there any business transacted at this brass-founder's?—I do not know what the business was, it was Upton's business as I understood; Upton said he had some business at this brass-founder's, what his business was I know not.

Nor am I asking you, except as you collected it from what passed on the spot; what passed there?—I cannot recollect; it was something in the way of his own business.

Did you see any thing produced at the brass-founder's?—Not to my recollection.

Will you swear there was not?—I will not; but I have no recollection of any thing.

After you had finished your business there, where did you go?—The next place we went to, was a house in Shoe-lane I think.

What business was carried on there?—The same business.

D

A brass-founder?—Yes.

You went immediately from the house we first talked of, to the house in Shoe-lane?—Yes.

How long were you there in company with Crossfield and Upton?—Not at all; I did not go into the house.

You waited for them without?—Yes.

How long were they there?—A very short time indeed.

How long do you think?—I suppose a minute or two minutes, a very short time.

Where did you go to from the brass-founder's in Shoe-lane?—To a house in Cock-lane.

You did not go with them into the house in Shoe-lane?—I did not.

Upon your oath did you go in afterwards to inquire after them?—I did.

It would have been as well to have told us that—then after they were gone from the brass-founder's in Shoe-lane you went in to inquire where the two gentlemen were gone?—I did.

In consequence of the information you received there of your two friends, you went after them?—Yes.

How soon did you overtake Crossfield and Upton?—I overtook them in Shoe-lane; I was informed they were just gone out.

Then you walked together to Cock-lane?—Yes.

To what house of trade there?—To a person of the same business.

A brass-founder?—Yes.

Did you go in with them there?—Yes; I believe I went into the shop.

Have you any doubt about it?—No; I have not.

You three went into the brass-founder's in Cock-lane together?—Yes.

What passed there?—I know nothing about it, only there were some directions given by Upton to the brass-founder, what these directions were I do not know.

Directions given with respect to what?—I do not know, something in the way of Upton's business.

With respect to doing what?—I have no recollection, I am not a brass-founder; I do not know.

Do you know what a tube is?—Yes; certainly, any man must know what a tube is.

Was there any conversation there about a brass tube and its dimensions?—I have no recollection of any thing of that kind.

Recollect that you are upon your oath?—I know that perfectly well; and therefore I shall say nothing but the truth.

Was there any conversation about a model?—There might be such conversation pass; but I do not know whether there did or not.

Do you mean to swear you do not recollect any thing about a model for a brass tube, about its dimensions, or how it was to be applied?—I do swear I do not recollect about the particular business.

†

I am not asking you about particulars, but give us some information of what passed; was any brass tube produced by any body?—I have no recollection that there was.

Have you ever seen any thing like this before? [showing the witness a brass tube]—I recollect I saw that at the privy council.

Did you never see this before, as a subject upon which persons were conversing at the time you saw it?—I do not recollect that I did.

Did you ever see these before? [showing the witness the models]—No; I never did.

I am afraid you will forget your own christian name by-and-by; you have been long acquainted with Crossfield?—I have.

And are well acquainted with his hand-writing?—Upon my word I cannot say that I am.

Upon your oath cannot you venture to swear to his hand-writing?—There is but one thing that I can swear to his hand by, that is the signing of his name.

You have frequently seen him write?—I have.

Have you ever corresponded with him?—I never received five letters from Mr Crossfield in the course of my acquaintance with him.

Look at this paper [showing it to the witness] and tell me whose hand-writing you believe that to be?—I cannot swear to this hand-writing.

I do not ask you to swear to it, and you who are an attorney know I do not: upon the oath you have taken whose hand-writing do you believe that to be?—I cannot swear to a belief of this hand-writing.

Do you mean to swear that you have no belief upon the subject?—I have not.

Do you mean to swear that you believe that is or not the hand-writing of a man you are acquainted with?—I do not know enough of it to be able to form an opinion upon it.

Now open this paper and look at it; have you ever seen it before?—I do not know upon my word.

Mr. Garrow—I am sorry to be obliged so often to admonish you, that you are upon your oath?

Witness.—You might save yourself all that trouble I know it very well.

Lord Chief Justice Eyre.—You recollect that when you answer upon your word, that is not exactly answering on the obligation that you are speaking under, that was the occasion of your being reminded that you are upon your oath.

Witness.—I consider that when I first came into court, I was sworn to speak the truth.

Lord Chief Justice Eyre.—But it is not the proper manner of answering to say 'upon my word' it may be so and so:

Witness. It may not be a proper way of answering; but I consider that every thing I

am saying in this court, I am saying upon my oath.

Mr. Garrow.—Then upon the oath you have taken, have you ever seen that paper before.—There were some papers shown me before the privy council, whether this is one I cannot tell upon my oath I do not know.

Have you the least doubt that that paper was shown to you before the privy council, that you were interrogated to the subject, and that you gave answers respecting it?—I do not know whether this piece of paper was shown me or not; there were some pieces of paper shown me.

Do you mean to swear now, that you have no belief whose hand-writing that is, after looking at it?—I can form no belief about it.

You cannot be sure that you ever saw this paper before I handed it to you?—No.

Have you ever seen any paper which appeared to you to describe the same subject; I am not speaking of your examination at the privy council, but had you before you were examined by the privy council seen a paper containing such drawings as I have shown you; I tell you now that I have your examination in my hand—upon your oath had you before your examination by the privy council ever seen, and I shall ask you presently in whose custody, any paper with similar drawings to this?—I do not recollect any thing of the kind.

Are you equal to the swearing that you never had?—I cannot swear that I never saw such, but I have no recollection of any thing of the kind.

Have you any belief of the kind?—I can form no belief.

I ask you once more upon your oath have you never said when you were upon your oath, that you had seen a paper similar to that?

Mr. Adam.—Does your lordship think this is the proper way of examining a witness in chief?

Lord Chief Justice Eyre.—The whole course of this species of examination is not regular. This is a witness for the crown; if he disgraces himself, which it is the tendency of this examination to make him do, they lose the benefit of his testimony. The idea of extracting truth from a witness for the crown, who disgraces himself, is in my apprehension, and always has been, a thing perfectly impracticable, for the moment he has gone to the length of discrediting his testimony, by the manner in which he shuffles with your examination, there is an end of all credit to him. You recollect upon a very solemn occasion, the judges were all of opinion, that that kind of examination on the part of a prosecution was improper, for that it always ended in destroying the credit of your own witness.

Mr. Garrow.—My object was, to refresh his memory. Be so good as look at this paper [another paper] do you know it?—I do not.

Do you recollect ever seeing it before?—I cannot say I recollect ever seeing it before, but it appears to me to be a paper similar to what was shown me at the privy council.

You are correct in that—that is the paper that was shown to you before the privy council—supposing that to be the same paper, do you recollect ever to have seen it before it was shown to you at the privy council?—I do not.

Do you know whose hand-writing it is?—I do not; it appears to be a different hand-writing from the last you showed me.

Nor the drawings whose they are?—No.

Do you know whose hand-writing this is?—It is a hand-writing I am not acquainted with.

The last place that they were at I think was the brass-founder's in Cock-lane—how long were you, Crossfield, and Upton at the brass-founder's in Cock-lane?—A very few minutes.

Where did you go next?—To Mr. Hill's in Bartholomew-close.

What business does he carry on?—I believe he is a turner.

A turner in brass or wood?—I do not know: I have heard he is a turner.

Is he a member of the London Corresponding Society?—He was at that time.

Both Upton and Crossfield, if I understand you right, accompanied you to Mr. Hill's?—They did so.

What passed there?—I recollect Upton giving some instructions to Hill for something, I think the word model was made use of, but I am not a mechanic myself; the word model or pattern, or something of that nature was mentioned.

Was any drawing produced upon that occasion?—I think I remember Upton producing some drawing.

For what purpose?—As instructions for something that Hill was to make.

Was that drawing left with Hill?—I cannot say.

You did not see the drawing made at the time?—I think Upton made it at the time; but I will not positively swear that.

Do you recollect any thing more that passed at Hill's?—No.

Do you recollect any thing else being produced at Hill's besides the drawing?—I do not recollect it, there might be such a thing produced, but I have no recollection of it.

After you had left Hill's where did you go to next?—Mr. Crossfield and I were going somewhere upon some business together; it was merely an accidental business Upton's going with us.

That can be no answer to my present question; which is, where you went to from Hill's?—I cannot recollect.

Did you part there, or go any where together afterwards?—I believe we parted somewhere thereabouts—I do not recollect going any where after that.

Where did Upton live?—In Bell-yard.

How many times do you think, speaking within compass, may you have met Mr. Crossfield at Upton's?—I suppose I might have seen him once or twice before.

How often afterwards?—I do not recollect whether I was there afterwards or not.

What is the impression upon your mind—At the time these things were going on, I had no idea that they were of a nature that I should be called into a court of justice to give evidence upon, and therefore I considered them as mere trivial things.

You heard of the circumstance that certain persons were taken into custody upon Upton's information?—Yes; certainly.

Where was Crossfield living at that time?—Where I told you before, in Dyer's-buildings.

How soon after the information given by Upton became public, did Crossfield remove from Dyer's buildings?—I cannot say.

How soon did you miss him from London?—I have no recollection upon the subject; I left London about that time myself, I generally go into the West of England about that time in the year.

Perhaps he went with you?—He and I went to Bristol together.

How soon after Upton's examination before the privy council was it that Crossfield and you left London?—I cannot say.

Was it before or after you knew that a reward was advertised for the apprehension of Crossfield?—Many months before that.

You went to Bristol together?—Yes.

When did you go to Bristol?—I think in the month of October 1794, but I cannot be certain.

Has Mr. Crossfield any family, or is he a single man?—He is a married man.

Did his wife reside with him in town?—She did not reside with him at the time you are speaking of; she did not reside with him in Dyer's-buildings, I believe.

I meant merely to ask whether his family went with him, or he went alone with you?—His wife did not accompany us.

You and he went alone?—Yes.

How long did you continue at Bristol?—I continued there a few days, and I left him at Bristol; he had some idea of settling at Bristol, as a physician; he went down with that intent.

Did you ever see him at Bristol again?—I did not.

Did you see him in any other part of England soon after you left him at Bristol?—Yes; I saw him in London.

How soon after you came back to London did he return from Bristol?—It was about the time that I was first examined before the privy council, that he came to London.

Where did he reside when he came to London?—I do not know.

Did he go back to Dyer's-buildings?—He did not.

Did you correspond with him whilst he was at Bristol?—I think I received one letter from him whilst he was at Bristol, and but one.

Did you write to him?—I do not recollect.

I wish you would try to recollect whether you answered his letter when he was at Bristol? I do not recollect whether I did; I did not enter his letter.

Perhaps it might assist your memory, to ask you whether you addressed to him by the name of Crossfield, or any other name?—If I addressed to him at Bristol, it was by the name of Crossfield.

Then did you write to him there or not?—I do not recollect; but I do not think I wrote to him at all.

How long did he continue in town after his return from Bristol?—I think I might have seen him at the distance of a fortnight or three weeks.

Was this about the time that you were attending the privy council from time to time?—Yes.

And you do not know where he resided?—No.

Where did you meet him?—I never saw him but at my own chambers.

Did you ask him where he resided, if you should have occasion to call on him or to write to him?—I do not know whether I did or not; yes, I think I did.

But you did not know where he was to be found?—No.

Do you know where he went to after he left Bristol?—Only from hearsay.

Did he correspond with you after he left London again?—No.

You probably then did not see him again till after he was in custody?—I have only seen him once since he was in London, and that was at the privy council.

Mr. Peregrine Palmer cross-examined by Mr. Adam.

You have known Mr. Crossfield for fifteen or sixteen years; was he in the habit of frequently coming to your chambers?—Yes; I was upon terms of great intimacy with him.

And he came frequently to your chambers in the months of August, September, and October, 1794?—He did.

Did you happen to know at that time the particular state of Mr. Crossfield's health?—I did.

What state of health was he in?—I know he was in a very ill state of health.

Was he under the necessity of taking any medicines to alleviate pain?—I know he used, at that time, to take large quantities of opium.

I think you said, that upon a particular day in September, 1794, but the particular day of the month you did not mention, you went with him to Upton's?—Yes.

Do you happen to know how long Crossfield and Upton had been acquainted before

that time?—I do not know how long before, some very short time before.

How long had you yourself been acquainted with Upton before that time?—I suppose a month, or two months.

Can you tell whether Mr. Crossfield's acquaintance with Upton, was in consequence of your acquaintance with Upton?—I believe Crossfield's acquaintance with Upton was by seeing him at a division of the Corresponding Society.

Can you tell how long this was antecedently to the time when you went to Upton's house with Crossfield?—I have no recollection.

Upton was a watchmaker, was not he?—He was.

Do you happen to know whether he is a mechanic in any other respect than as a watchmaker?—I remember seeing at his shop an electrical machine that he had made, which he showed us as a curiosity.

Upton was a member of the Corresponding Society?—He was.

Do you happen to know whether there was any inquiry going forward in that Society, in regard to Upton's character and conduct?—I remember he was disgraced in that society.

Do you happen to know whether any of the persons, who are charged upon this indictment, were among those who disgraced him in that Society?—I know that Mr. Le Maitre was one that particularly objected to him.

Do you know of any other?—I do not.

Can you tell whether the inquiries, respecting Upton, were going forward about the end of August, or the beginning of September, 1794, and down to the latter end of September?—I cannot charge my memory as to dates; about that time I was in the habit of attending some of the meetings of the society, and it was during that time that this inquiry took place.

Do you recollect at what particular times you were in the habits of attending the society?—I think in the months of August and September of that year.

You say, that on the day on which you and Mr. Crossfield went to Upton's house, you went with him to New-street, or New-street-square, you cannot recollect which?—There are two or three streets there that are called New-street, and New-street-square.

What was the circumstance which led you to go to Upton's on that particular day?—Upton had a watch of mine to repair, Crossfield and I, I think, though I do not mean positively to swear to that particular circumstance, Crossfield and I dined that day together, and I called afterwards with Crossfield upon Upton for my watch.

Do you recollect where you dined that day?—I have no recollection.

Do you recollect in what part of the town it was?—Somewhere in the neighbourhood of Temple-bar.

Upton lived in Bell-yard?—Yes.

Then, for the reason you have given, you called upon Upton?—Yes.

And thence you went to the house in New-street?—Yes.

That was a brass-founder's?—Yes.

Did you all three go in?—I believe we did.

Do you know who came to you upon that occasion, whether it was the master or the servant?—I have no recollection of either the master or servant in the business.

From thence you went to Cock-lane?—Yes.

You said you did not go into the house in Cock-lane?—No, that was in Shoe-lane.

Did any thing particular prevent your going into the house in Shoe-lane?—I recollect I had a natural occasion to stop.

You went in afterwards and inquired whether they were gone?—Yes.

And then you saw them in the street?—Yes, I followed them.

Was it in consequence of overtaking them there that you went with them to the next place?—Mr. Crossfield and I were going together into the city; when I called at Upton's for my watch, Upton said he was going the same way and would accompany us, that was one reason I know why Upton accompanied us upon that occasion.

You went to Cock-lane next?—Yes.

Did you go to any other place that night?—Yes; I went to Hill's afterwards, in Bartholomew-close.

You were asked by my learned friend, with respect to Mr. Crossfield's place of abode; he lived in Dyer's-buildings?—Yes.

Did he live in family there?—No, in lodgings.

Do you remember to have seen Crossfield about the time Smith, Le Maitre, and Higgins were committed?—I do.

Do you remember to have seen him about at that time, just as publicly as before?—Yes, just the same.

Lord Chief Justice Eyre.—Was that after his return from Bristol?—No, before he went to Bristol.

Mr. Adam.—Did you see him repeatedly about this time?—Frequently; I staid in town but a few days before I went to Bristol.

Lord Chief Justice Eyre.—You went to Bristol soon after Le Maitre and Smith were in custody?—Soon after.

Mr. Adam.—Do you recollect any thing that passed between you and Crossfield respecting this journey to Bristol?—I know Crossfield intended to go to Bristol three or four months before that time, to see whether it would be an eligible place for him to settle in as a physician; and that he intended to make some experiments upon the Bristol and Bath waters, which he thought might be of service to him in his medical capacity.

How long had he this intention before the time we are speaking of?—For several months before.

How long did you remain at Bristol?—A few days.

And Crossfield with you?—Yes.

Had you frequent opportunities of seeing Crossfield at Bristol?—Yes, every day.

Did he go about publicly?—As publicly as any man could possibly do.

You left him at Bristol, and he remained there sometime?—He remained there till the time when I was first called before the privy council; he returned to town about that time.

You saw him then?—Yes, in London.

Did he use any mystery about himself, or his situation then?—No, he did not at the time when I first saw him; I never made any particular inquiries about it.

Do you know at what time he left London?—I think, the last time I recollect to have seen him, was on the day I was last called before the privy council: I was called three times before the privy council, in a week or ten days: the last time I saw him was, I think, in the month of January.

Then Upton being called before the privy council, when Higgins and Le Maitre were before the privy council, was in the end of September?—I think it was in the month of September.

My learned friend asked you with respect to his being advertised, and a reward offered for apprehending him; when did you first see that?—I cannot speak as to the time when it appeared; but this I know, that it was a considerable time after I last saw him, and a considerable time after I heard that he was sailed.

Had you ever any conversation with Upton, with regard to the instrument?—I never had.

Mr. *Peregrine Palmer* re-examined by Mr. *Garrow*.

It will be necessary to ask you one or two questions. You told my learned friend, that the last time you saw Crossfield, was before he went abroad; was it on the day you were last examined before the privy council, before he went abroad?—Yes.

Where did you see him that day?—At my own chambers.

That was after your return from Bristol?—Yes.

You told him you had been examined before the privy council?—Yes.

Have you been examined more than once by the privy council?—Yes, three times.

Upon which of your three examinations before the privy council did you undertake, if possible, to find Crossfield, and to produce him before the privy council as a witness?—At my first examination, I think, it was.

How often, between your first and your third examination, did Crossfield visit your chambers?—I cannot say.

Was it daily?—No, it might be once or twice; when I say once or twice, I do not mean to say that he was no more than twice

at my chambers; I cannot particularly say the number of times.

The last time you saw him was on the day on which you concluded your examination before the privy council, after you had been examined?—I think it was before I attended the council.

You saw him, probably, in the early part of the day, and went and was examined afterwards by the privy council?—Yes.

There is one other thing I wish to have explained. You said Crossfield went to Bristol with a view to see whether that was an eligible situation for him to settle in as a physician; and to try some experiments upon the Bristol and Bath waters. Did he announce himself as a physician newly arrived at Bristol, or at Bath?—He did not go to practise as a physician, he went to see whether Bristol would be an eligible situation for him to practise as a physician.

There is one thing more that may be mistaken unless I put a question upon it.—In your answer to Mr. Adam, you said that before he went for Bristol, he was publicly about here in town?—Yes.

And, I think, you said that though you inquired of him, after his return, you never learned from him where his residence was?—No.

And you only saw him at your own chambers?—Certainly; and the reason he assigned to me was—

Mr. *Garrow*.—I do not ask your reasons.

Lord Chief Justice *Eyre*.—It is part of the explanation.

Witness.—The reason he stated was this— I told him the circumstance of my being summoned before the privy council at the first time; and I acquainted him that his attendance was likewise required, he told me he was engaged to go abroad as the surgeon of a ship; that he had no kind of objection to attend the privy council; but he knew nothing of the matter then before the council; and that his staying in town would be the means of detaining him from going the voyage.

Mr. *Garrow*.—You explained to him that the privy council wished much that he should attend, and that you had promised to procure his attendance as a witness?—Yes.

To which he answered, that knowing nothing of the affairs that were transacted there, and being engaged to go abroad, he should go, and not continue any longer in town for that purpose?—Yes.

Did you ever communicate, in either of your examinations, to the privy council, that the gentleman did not attend because it was inconvenient to his affairs?—My examination will show that.

Or whether your examination did not close without the privy council having the least conception, from any thing you stated to them, that you knew where to find Crossfield?—I certainly did not know where to find him.

John Hill sworn.—Examined by *Mr. Law*.

You are a turner?—Yes.

Where do you live?—In Bartholomew-close.

What division of the Corresponding Society were you a member of?—Division six.

Were you acquainted with Upton, in September, 1794?—I knew him.

Do you know *Mr. Palmer*, who has just been examined?—Yes.

Do you remember Upton and Palmer coming to your house about that time?—Upton, Palmer, and another man came to my house about that time.

September, 1794?—Yes.

Do you remember any question being put to you by Palmer, or that other man, when they came to your house at the time you mentioned?—Upton asked me if I could turn in wood, I told him yes; he asked me if I would do him a job, I said yes.

Did he mention any thing about a sketch?—No; he began to tell me about what sort of job it was to be—I did not rightly understand, according to what he said to me, what sort of thing he wanted, but they made a sketch of it.

Look at this paper, is that the sketch?—I think that is the sketch that was produced.

Lord Chief Justice Eyre.—Was it done in ink, or with a pencil?—In ink, I believe—I lent them a pen and ink.

Mr. Law.—I see there is written on the other side "This house to let, inquire within."—Was that written on the paper before they made the sketch upon it?—Yes.

Was that a paper of your's they found at your house?—Yes.

Were all the three persons you have mentioned, Palmer, Upton, and the third person to whom you have not given a name, present when that sketch was drawn?—Yes.

Had you any conversation with them in which way the thing that was so sketched out was to be done?—I asked Upton what it was for; he said it was for something in the electrifying machine way; he told me to bring it to his house, and that I should be paid for it.

Was any thing said how it was to be done?—Nothing more than that.

Do you recollect whether Upton, Palmer, or the stranger, sketched that out?—The stranger did something to it, to the best of my recollection.

Were there more persons than one that did something to it?—I think I did something to it.

Under whose direction did you do that something?—Directions from Upton.

Was the whole done between you, Upton, and the stranger?—Yes.

Palmer did no part of it?—I do not recollect that he did.

There is a straight piece—was there any conversation about doing the straight piece?

—I asked what it was for, they said it was something in the electrifying machine way.

Was it said how the straight piece was to be done?—It was to be quite straight, like a round ruler.

Is that [showing the model in wood] one of the things you made, in consequence of that direction, as a round ruler?—I think it is.

Was that the thing you did as a model for the brass-work?—Yes that looks like it.

One was to be done in wood-work, the other in brass-work; you did this as meaning to conform to the directions contained in the sketch?—Yes; and I took them to Upton's house, for him to look at them to see if they were right.

Did the persons who bespoke them order you to do so?—Upton ordered me to do so.

Which of them told you you should be paid for them?—Upton.

Are you sure it was Upton that told you that?—Yes.

Are you sure none of the others mentioned any thing about paying for them?—Yes.

Do you remember whom you saw when you went to Upton's?—I saw a man playing at cards with him; I do not know who that man was.

Did you see *Mrs. Upton* there?—I cannot recollect whether I did; only I recollect perfectly well he was playing at cards with a man.

Was there no woman of the party?—I think I did see a woman; she came into the place in the mean time, I think.

And you left these things?—I did.

When did you carry the things to Upton?—About three days after they were ordered.

Do you happen to recollect the day of September when they were ordered?—Towards the latter end of September, I believe it was.

John Hill cross-examined by *Mr. Gurney*.

You have stated that you yourself were a member of the Corresponding Society—of that society Upton likewise was a member?—Yes he was.

Have you any knowledge of any inquiries that were going forward at that time in the Corresponding Society respecting Upton—were there any imputations thrown upon Upton's character in the Corresponding Society?—There were.

Do you knew any of the persons who were principally concerned in throwing those imputations—was *Mr. Le Maitre* active in that?—I cannot say exactly; Higgins said something which affronted Upton, when they were about to investigate his character.

Were you present at any other meeting when any person whatever brought any charges against Upton?

Mr. Law.—I object to that question.

Lord Chief Justice Eyre.—The object of the examination is, to fix that Upton had, for some reasons, which they mean to show; conceived malice against some of those persons.

Mr. *Eaw*.---I submit they are to get at that object by regular means.

Lord Chief Justice *Byre*.---The means they propose is, to show that some of these people made some charges against Upton, in consequence of which the former witness said Upton was disgraced.

Mr. *Lau*.---I do not object to any thing that is asked respecting Le Maitre, or any body by name, but the question is put in general.

Lord Chief Justice *Byre*.---In general, unless it can be followed by something personal to some one of these people, it amounts to nothing; but the examination has already gone to Le Maitre being one of the persons.

Mr. *Gurney*.---I assure your lordship I abstained from mentioning the names of any one of the prisoners, that it might not be said I put the words in his mouth; but as that gives rise to an objection, I will put my questions more directly.---Do you remember whether, pending that examination into Upton's character, you heard Higgins say any thing in the society respecting Upton's character?---Upton was going to save the society the trouble of expelling him---he was going to take himself away; with that Higgins said, 'there he hops off': he affronted Upton directly, because it was casting a reflection upon his lameness.

Were there, or were there not, expressions of violent animosity passing between Le Maitre, Higgins, Smith, and Upton, in the society?---There was some animosity between them, but I did not particularly notice what it arose from, nor how it ended.

In point of fact, were Le Maitre, Smith, and Higgins, pursuing any inquiry into the character of Upton?---Not that I know of.

At any time after you had delivered this model to Upton, did he call upon you at your house, after Le Maitre, Higgins, and Smith were apprehended?---After Upton was apprehended himself, on the Sunday, he called upon me.

How long before that had he himself been taken up?---Only on the Saturday night, according to his own account.

What did Upton then say to you respecting Le Maitre?

Mr. *Attorney General*.---I would just intimate to Mr. Gurney, that I have not offered any evidence of acts or declarations of Upton, unless in the presence of the prisoner.

Mr. *Gurney*.---Your lordship has already observed the object of my cross-examination is to prove the animosity in Upton's mind respecting some of the persons in this indictment, I am going to ask a question to point out that animosity, by showing something Upton said concerning one of those persons.

Lord Chief Justice *Byre*.---The difficulty of the case is, that at present there is nothing (properly speaking) from Upton in evidence, and therefore your showing that Upton had animosity against any of these prisoners, is

rather going before the point; it will be better for you to examine to that, in case they can establish any declaration of Upton's which will be evidence against your client, then it will be proper for you to show that Upton had malice against your client.

Mr. *Gurney*.---If your lordship will direct the witness to retire for a minute, I will state the object of my question more particularly.

Mr. *Adam*.---I submit to your lordship that the line of examination Mr. Gurney is now following up is admissible in the present stage of the cause. Your lordship will observe that this indictment lays, as the attorney general has stated, a conspiracy to take away the life of the king; that there are counts which contain an allegation of conspiracy; and, as the attorney general stated, there is likewise part of the indictment which contains no allegation of conspiracy: the prisoner is brought up upon the whole of the indictment, and he has pleaded to the whole of the indictment; what part of the indictment is to be submitted to the consideration of the jury as proved, and what part of the indictment is to be submitted to the jury as not proved, it is impossible for me at the present moment to know. All that I know at present is, that the prisoner stands indicted with having conspired with three others who are known, and with others who are not known to the grand jury, for the purpose of taking away the life of the king; and it is particularly alleged in the different overt acts, with regard to the preparation of this instrument which is supposed to be made for that particular purpose, and with regard to the consultations supposed to have been had among the parties, that this Upton, whom my learned friend has stated to be in the other world, and whom therefore he cannot produce as a witness---that Upton is not only one of the principal conspirators, but the material one; and not only so, but that this instrument was delivered to him for the particular purpose stated in the different overt acts: what I wish to call the attention of the Court to is this, Upton then appears upon the face of the charge to be a person whose name, whose character, whose mind, whose demeanour, whose intention, with regard to these parties is necessarily implicated, and therefore I think it follows, as a necessary consequence, that when a witness is brought by the prosecution from whom the counsel for the prisoner imagine they can derive intelligence with regard to Upton's animosity, and the nature of his mind, they are entitled to give such colour and such appearance to the character of that person, who evidently is a principal actor according to the evidence before the Court as will fairly tend to exculpate the prisoner; for your lordship observes, in every step that has been taken, throughout all the peregrination in the different streets to the different brass founders---that throughout the whole Upton has been the foremost man; and therefore I contend, that, as the whole seems to

have issued from Upton, as Upton is named upon the record, your lordships and the jury have to try HIS CONDUCT AND HIS CHARACTER : but, above all, I contend that that which my learned friend is examining to, namely, the animosity of Upton, is a fit subject for examination ; and whatever makes out that animosity, which shows that any of the persons charged with this conspiracy could not conspire with Upton, on account of the animosity in which they lived, is *prima facie* ground for our examination ; we do mean, if we are under the necessity of going into our case, to give your lordship such evidence in chief ; but at present, if the crown bring a witness from whom we imagine we can prove that fact, all we claim of the Court is, to be allowed to do it now.

Mr. Gurney.—Perhaps it would exclude all objection if I were to state the exact object of the question I was proposing :—it is, to prove an attempt of Upton to suborn Hill to swear, before the privy council, that Le Maitre was the person who called upon him with Palmer when he received the order for these models.

Mr. Attorney General.—I rise for the purpose of stating to your lordship, that I do not feel any anxiety with respect to what the Court may think proper to direct upon this subject. It was in consequence of an intimation given by me, that your lordship had the trouble of hearing any discussion upon it ; because, when Mr. Gurney was putting a question respecting a declaration of Upton's in the absence of the prisoner, I thought it my duty to intimate to him that I had cautiously and studiously abstained from asking any question, with respect to any declaration or act of Upton, where I have not evidence to offer that the prisoner was one of the persons present : I have no objection to its being taken in any way Mr. Gurney chooses to state, that Upton had as much animosity as possible against Higgins, Le Maitre and others ; what I state is this, that the declarations of Upton never can be evidence in a case of this sort, unless we, on the other hand, had given some evidence of the declarations of Upton, with respect to the party now at the bar. Mr. Adam says that Upton is stated upon this record to have conspired with these persons ; that is not the fact ; we are to prove the conduct of the prisoner ; having done that, it must be not by the declarations of Upton, but by evidence, independent of these declarations, that the purpose and intention of his mind must be proved to be such as is charged upon this record.

Mr. Law.—There is no one charge of a conspiracy with Upton through the whole of the indictment, nor is his name mentioned as a conspirator ; we have not attempted to give any evidence of any acts of Upton but in the presence of Palmer, and a third person, whom we have shown to be the prisoner : if we had given evidence of declarations of his at a dis-

tinct and detached time, it would have opened a door to this evidence.—If it is fit to ask this question, we submit we should be at liberty to go into declarations of the same man Upton.

Mr. Garrow.—It seems to me, that the very manner in which it may be insisted that this is a proper examination, goes to demonstrate it cannot be proper in this stage of the cause : I am aware there is a stage of the cause, as has been hinted, when this may by possibility become competent evidence : it is as it is opened, to show the animosity of Upton : and from whence the learned gentlemen state that they mean to infer, first, that Upton could not by any possibility or probability conspire with those with whom he was in a state of constant animosity, and that probably he was of course not conspiring with them but against them. Now I could understand the application and the importance of this argument, and the examination, if the course the attorney general had taken had been this instead of charging and laying before your lordship the acts of the prisoner now at the bar, and his acts alone, or the acts of others when in his company and presence, the attorney general had given in evidence either the acts of Upton when alone, and when he might have been actuated by animosity against any of these persons, or declarations of his when he might have been actuated by the same animosity ; to repudiate all those acts of Upton, to get rid of the impression of all these assertions and declarations of Upton, so circumstanced, I could easily imagine the extreme importance of showing that Upton had declared he had set about doing this with a view to injure others, but it seems to me that that can by no means be evidence at present.

Mr. Adam.—Your lordship will favour me with a few words in reply. Your lordship will observe what the nature of the question is that is proposed to be put, for it is only by referring to the particular question that your lordship can judge of the propriety or impropriety of putting it ; the question my learned friend proposes to put is this, whether in point of fact Upton did upon a certain day, and at a certain time, after the discovery of this supposed conspiracy—whether he did or did not endeavour to get the witness at the bar to make a false accusation against Le Maitre ; one of the persons accused of this conspiracy. Now your lordship will observe, that that is a question which does not go to Upton's general declarations—which does not go to his general demeanour—which does not even go to establish an universal prevailing animosity in the mind of Upton, but it goes to establish this clear and distinct point, that there existed in the mind of Upton either such an animosity, or such a desire of self-preservation, that he was determined to get a person to lay the whole blame upon, in order that he might either escape harmless, or possibly that he might wreak his vengeance upon the per-

son who had offended him, against whom he had an animosity, and I contend that, as this is an indictment for a conspiracy to take away the life of the king, and as in that Upton is mentioned by name as one of the persons employed to make this particular instrument and as he is brought forward as a particular character in this transaction, my friend is entitled to defend the prisoner by an examination into the attempts of Upton to suborn this man to perjury against one of the persons indicted for this conspiracy.

Lord Chief Justice *Eyre*.—I doubt whether the fact (if distinctly proved) that Upton had done any thing that marked animosity, or that he had made such a declaration as this, can, in any stage of the cause, when one comes to consider it, be admitted; I will not pronounce a positive opinion upon that, because I do not know exactly what will be the course of the evidence, or what ultimately we may think fit to receive, which may let in these declarations. At present it is not receivable, because they are declarations not upon oath—declarations not upon oath of a man dead, not under those circumstances which place it upon the footing of an oath; and therefore whatever Upton may have said is not in its own nature evidence, and consequently cannot be received, unless in one particular case, and that is where it is *argumentum ad hominem*, by way of taking off the credit of any thing the witness had said at another time upon his oath, there it may be gone into, though not upon oath; for if a man is upon oath in one story, and makes a declaration before or after of a different kind, this will take off from the credit of that testimony; otherwise, in the nature of the thing, Upton's declaration is no evidence at all.

Mr. *Garrow*.—I now propose to call John Le Bretton.

Mr. *Adam*.—I should be obliged to my friend to state to what points he proposes to examine this witness.

Mr. *Garrow*.—I call this witness to two facts, both of which, as it appears to us, are of considerable importance; the first is to the time and manner of the flight of the prisoner, after this accusation was made known against Upton; the next is, to his distinct declarations of the share of the guilt he had in this transaction.

Mr. *Adam*.—My friend has stated that the principal point to which he means to call this witness, is to the declarations of the prisoner with respect to his participation in the guilt of this transaction. If my learned friend has any particular fact, that is a different question, and I have no objections at all to his calling Le Bretton to prove that fact; but if he means, after he has proved that particular fact, to go on to examine Le Bretton to declarations of the prisoner, I then have to submit to your lordship, with great humility, but I think with great confidence, that your lordship, when you come to consider the situation of this prosecution,

will be of opinion, that there is no ground whatever for admitting such evidence of declaration.—First of all permit me to state to the Court how I understand the facts in this case to stand; secondly, permit me to state to the Court—

Mr. *Garrow*.—I was going to submit to my friend's judgment, whether it would not be more proper to wait till I had exhausted that to which my friend feels no objection; because it is not impossible that in the first part of my examination of this witness I may remove a part of my friend's objection.—I mean to show the distinct fact of his flight.

Lord Chief Justice *Eyre*.—But you must first show the *corpus delicti*. Does this man fly because he and two other persons went into a brass founder's shop, or a turner's shop, and ordered instruments of a particular description—what then? If there was an examination before the privy council—what then? What all this means at present I know nothing of, nor can the jury know any thing of it; you must first of all show that in somebody this was an offence, and you may, for aught I know, show it by the very medium of the evidence which you propose to call, but then you must begin at the other end of it; there is a possibility that you might give a sense and a meaning to this obscure and unintelligible evidence which we have had already, that may connect and apply it to the particular charge, but at present I should say, we have heard a great deal about a turner's shop, and a brass founder's shop, and it is all nothing.

Mr. *Garrow*.—Your lordship must be aware that the attorney-general would not have left this case as it is brought now.

Lord Chief Justice *Eyre*.—Certainly not.

Mr. *Garrow*.—We are now going to give those facts the solution which the Court is asking for.

Mr. *Adam*.—The only misfortune I labour under is, that the train of my thoughts has suffered some degree of interruption from my learned friend; not, I am sure, with any intention of that sort, because I always experience kindness and civility from him. I will endeavour to recover the train in which I was proceeding as well as I can.

Lord Chief Justice *Eyre*.—What are we about? Mr. *Adam* do you mean to say that the prisoner's confession of his guilt, if any such thing happened, is not to be given in evidence against him, out of his own mouth?

Mr. *Justice Grose*.—What he has said perhaps is respecting the purpose for which these things were ordered.

Mr. *Adam*.—Will your lordship permit me to state the grounds upon which I mean to address myself to your lordship.—I was endeavouring to draw your lordship's attention to the nature of the facts, and to the manner in which these facts were proved, and then to ask your lordship whether there was, according to the proof that now lies before the Court, any evidence whatever, in a prosecution for a

crimes of this sort, that could entitle my friends to give in evidence these declarations, and these confessions; and I found my observation in the nature of this prosecution, and the law of high treason. My friend, the attorney general has stated, with great correctness, that there must be an overt act laid in the indictment; that that overt act must be proved not by one witness but by two, unless there are two overt acts of the same kind, and then one may be proved by one, and another by another witness. What is the nature of the evidence already given?—Your lordship has had given in evidence, as I stated it before—not with a view of stating it in any way but a perfectly grave one—a peregrination of three persons from one brass-founder's shop to another, and then to a turner's shop; your lordship has it in evidence, that where any thing was made, the prisoner had no earthly connexion with the order.

Mr. Garrow.—He expressly assisted in directing the model.

Mr. Adam.—The first witness called was Dowding; that witness did say he believed they all assented, but that Upton alone spoke: at that place nothing was done of any sort. They then went to another brass founder's, where nothing was done. They then went to a third, where nothing was done. Then, afterwards, they came to the turner's, where there were directions given to make a particular thing, in a particular form, in wood.—Now, what I contend before your lordship is this, that to that fact there is but one witness—

Lord Chief Justice Eyre.—To what fact?

Mr. Adam.—To the fact of making that model which lies upon the table, and the only witness to that fact is the last witness who was examined; because your lordship will observe, that whatever opinion your lordship may have of Mr. Palmer's evidence, he has not spoken positively to any one part of the transaction; and it is perfectly certain, that whatever passed when Mr. Palmer was there, was never carried into execution at all; and, therefore, as far as Mr. Palmer's evidence goes, he does not advance one iota beyond the position in which the evidence stands with regard to the brass founders, namely, an inchoate direction, but which inchoate direction is not even proved specifically to be given by the prisoner, and certainly there is nothing proved to have been executed in consequence of that inchoate direction. Now what is the overt act, if there is any?—it is simply the making that model: then the making that model, if it is an overt act sufficient to entitle your lordship to admit the evidence of declaration and of confession, upon the part of the prisoner, is an overt act proved merely by one witness; therefore, I contend upon that ground, according to the form of proceeding in high treason, that it is impossible for them, without having established that overt act clearly and manifestly,

by the evidence of two witnesses, to found any thing that can advance one iota in proof of the guilt of the prisoner; and I state that confidently upon this ground, because if it were in your lordship's breast to admit the overt act to be proved by a single witness, and afterwards to admit the declarations of the prisoner, to give colour to the use of that instrument; you, in point of fact, send to the jury a question to try, with respect to treason, where the foundation, that is to say that which establishes the *corpus delicti*, is established by one witness only, and not by two as the law requires.—I contend, therefore, upon that ground, that if your lordship is of opinion with me, that I have stated that evidence correctly, that the only overt act, if it be an overt act, is the making that model, that that overt act is proved only by one witness; and consequently, according to the rules of proceeding in high treason, the Court have it not in their power, and the Court ought not—

L. C. J. Eyre.—You are right, what they ought not, they have it not in their power to do.

Mr. Adam.—Hitherto I have argued upon the idea, that there has been sufficient colour given to the nature of that model, the only overt act proved, the only thing proved to be done (for that is the meaning of an overt act) that tends to infer an attempt to take away the life of the king: your lordship will consider whether any colour is given to it or not; and then your lordship will consider this whether in point of fact if your lordship thinks there is no particular colour or complexion given to this, that takes it out of the situation of a common instrument for a mere matter of mechanical curiosity, you will admit confessional evidence in order to give that colour and appearance to it. I contend, that that which now lies before the Court, according to the evidence which has been given about it, stands in a situation in its nature perfectly indifferent; it may have been, for aught I know, meant for a very bad purpose, it may have been meant for a very good purpose, it may have been meant for a purpose perfectly indifferent, most undoubtedly I am entitled to put all these suppositions.—Now I ask in a criminal case of this sort, with evidence in the nature of confessional evidence, about which I am sure I will not trouble your lordship at any length in the present stage of this business, because your lordship is better aware of the nature of that evidence than any thing, I can say, can make you aware of it—I ask whether your lordship thinks, in a criminal proceeding of this sort, where the thing done is proved only as I have stated it, where it is not proved to be done with any particular colour,—I ask, I say, whether, until colour is given to it, by some such evidence as tends to prove an overt act, out of the mouth of witnesses that have received it, or are supposed to receive it from the mouth of the prisoner, your lordship thinks it right to admit it.

The nature of confessional evidence is this, that undoubtedly it is good or bad, according to the situation and circumstances under which it is given; and if your lordship permits confessional evidence to be given, does it not amount to this, that your lordship is allowing the words and declarations of a prisoner, not to a particular fact, but to the intent? if the words and declaration of the prisoner are to be proved upon this occasion, they do not go to prove an identical fact, but they go to prove a particular intent or a particular disposition of the mind.—Now to apply that again to the situation of this case, to the colour that is given to the use to which that instrument was meant to apply, I must then ask humbly, but most firmly, whether your lordship thinks, that in this stage of the cause, without going farther, it is possible for my friends to give the confessional evidence of the declarations of the prisoner in this case?—above all, I submit that this instrument produced, is the only overt act proved, that it is proved only by one witness, and consequently that they do not stand in a situation to show the mind of the prisoner, till they have established most clearly and indisputably this overt act, either by two witnesses, or till they shall have given such colour and complexion to it, as to entitle your lordship to think evidence of confession admissible, as confirmatory and corroboratory. Your lordship knows the doctrine of evidence of confession; there was a time when it was merely treated as corroborative evidence, though of late it has been admitted.

Lord Chief Justice Eyre.—Whether there is any rule of law, which requires that there should be a certain quantity of colour of charge proved in evidence before the Court can receive the confession of the prisoner?

Mr. Gurney.—My lord, I am about to cite an authority which I conceive will furnish an answer to your lordship's question; but I will first beg to state what evidence the crown has offered in support of this indictment. The attorney general has not yet stated the overt act, to which he intends to apply his evidence; but, I suppose, the overt act intended to be supported by it is the second, in which it is stated, that the prisoner, and others, did employ and engage John Hill, to make two pieces of wood, to be used as models for the making and forming certain parts of an instrument, to be used for the traitorous purpose charged in the indictment.

Now of any concern which the prisoner may be said to have had in that direction, I submit to your lordship that we have the testimony but of one witness; the identity of Crossfield, even as being present when these directions were given, has been spoken to only by Palmer.—Hill has not spoken to the identity of Crossfield, or any other person whatever, but Upton, and Palmer. The authority I allude to is this, in Mr. Justice Foster's discourse upon the subject of high

treason, page 241: "In the case of Francis Willis, the counsel for the crown called a witness to prove what the prisoner had said to him touching the share he had in the treason he then stood charged with.—The prisoner's counsel objected to this sort of evidence, and insisted, that by this act no confession, except it be made in open court, shall be admitted in evidence; but the judges present were very clear that such confession is evidence admissible, proper to be left to a jury, and will go in corroboration of other evidence to the overt acts; though it might be still a disputable point, whether a confession out of court, proved by two witnesses, is of itself sufficient to convict.—Upon this last point none of them, except chief baron Ward, delivered any direct opinion, his words are 'A confession shall not supply the want of a witness, there shall be two witnesses to the treason notwithstanding; but to say it shall not be given in evidence, there is no ground for it.' The attorney-general (sir James Montague) admitted, that two witnesses are necessary, besides the confession. The solicitor (sir Robert Eyre) is more explicit, and saith, 'he (the prisoner) shall not be convicted on a trial without two lawful witnesses, that is the thing provided for. It was to exclude a precedent that had been settled in Tong's case (the case already cited from Kelyng and Hale), but it was not designed to exclude all confessions. That was evidence at law, and always must be so. The design of the act was to exclude confessions from having the force of a conviction unless it were in a court of record; and to prevent a confession proved by two witnesses from being a sufficient ground for a conviction.'"

I submit that this is a direct and positive authority, that there must be two witnesses to treason, previous to the production of any corroborative evidence.

Lord Chief Justice Eyre.—To put an end to this objection, it will be sufficient to observe, that even upon the reasoning of the counsel for the prisoner, this evidence ought to be admitted, for here are two witnesses, and more than two to the very overt act that is now insisted upon, in the way in which the prisoner's own counsel put it; for unquestionably it being proved that these three persons were all together at Hill's, and a model having been there made, and approved of by one, at least, and they all present, it is a question for the jury, whether those who were present, and who did not express particular marks of approbation, did or not concur in it: and if they did concur in it, there are three witnesses to the overt act; but if it were not so it may be a good objection to make, in a future stage of the cause, that there is but one witness to any one overt act of high treason, and that this confessional evidence, upon your rule,

* See the trial of Francis Willis, *ante*, Vol. 15, p. 673.

will not supply the want of another witness; that may possibly be, but the use of the confessional evidence is at present to make the first part of the evidence intelligible, which it is not, nor do I know it ever will be; but it may, perhaps, appear from these declarations of the prisoner, whether the prosecutor's evidence can be rendered intelligible or not, out of the mouth of the prisoner—the authority cited shows, that the prisoner's confession is to be received in explanation, and corroboration of the evidence offered, and it may be offered upon the ground of there being already two witnesses to the overt act insisted upon; but I am of opinion, that it might be offered if but one witness at present had appeared, because another witness, after they have made this evidence intelligible, may come and give other evidence of another branch of the overt act; there is no rule of law which says, that you shall establish the overt act by the evidence of two witnesses first, before you shall hear any confessional evidence, and that is the only question in the cause.

John Le Bretton sworn.—Examined by Mr. *Garrow*.

You sailed from Falmouth, I understand, on board the *Pomona*?—Yes.

What were you?—Boat-steerer.

What was the *Pomona*?—A South Sea whaler.

You sailed from Falmouth, on the 13th of February, 1795?—We did.

Where were you bound to?—The Southern fishery, round Cape Horn.

Do you know the prisoner, Crossfield?—I do.

How long before you sailed, had you seen him?—He came on board our ship about a week before we sailed from Portsmouth.

Can you tell us at what time he did sail from Portsmouth?—On the 29th or 30th of January, I cannot say which.

In what character did he come on board?—As surgeon.

By what name did he pass, from the time he came on board at Portsmouth till you sailed?—By the name of “the doctor,” as is most commonly used on board a ship.

Did you understand that to be a description of his profession as doctor?—Yes.

Did you know his name at that time?—I did not.

Lord Chief Justice *Eyre*.—Do you receive men in this situation without having their name taken down?

Witness.—The captain might have his name taken down, but I did not know his name.

Mr. *Garrow*.—You sailed on the 13th?—Yes.

On the 15th you were taken by a French corvette called *La Vengeance*?—Yes.

And were carried to Brest?—Yes.

You arrived there on the 23rd?—We did, to the best of my knowledge.

Until after you were captured by the French

corvette, had you ever heard, from the prisoner, what his name was, or heard him called by any description but “the doctor”?—Not until we arrived at Brest.

What name did he then assume?—He wrote his own name in the list that was to be sent on shore, “Robert Thomas Crossfield.”

Were you shifted before you went into Brest?—Part of us were taken into the Frenchman.

Did the prisoner or you go in the first number that went out of the English ship into the French ship?—The prisoner went in the first number.

Do you recollect any expression of the prisoner, when he went over the ship's side?—Yes; as he was going over the side, he wished me and the chief-mate good by, saying, “he was happy he was going to France, he would sooner go there than to England.”

When you arrived at Brest, did you find the prisoner there?—Yes; on board the same corvette that had taken us.

After you had gone with your ship into Brest, were you put on board the same ship with him?—The *Pomona* was turned adrift, and we were taken into the same corvette as they were in.

By what name did he pass in France?—His own name in the muster list.

Were you mustered frequently?—Yes.

What was the conduct of the prisoner on board the *Pomona*, before he was captured?

Lord Chief Justice *Eyre*.—If you mean to apply it to this particular subject, very well; but as to any other misconduct of any other kind——

Mr. *Garrow*.—I mean to prove what was his conduct before he was taken, and then to contrast it with his conduct on this particular subject.

Lord Chief Justice *Eyre*.—But I think; there ought to be nothing given in evidence against the prisoner, that may operate to his disadvantage, until you have fixed something upon him to which that has a relation; till then it is all prejudice.

Mr. *Garrow*.—Then I must transpose the evidence.—After you had arrived at Brest, did you hear the prisoner make use of any expressions, with respect to his majesty the king of England; or as to any share he had had in any matter which related to his majesty?—Yes, I did.

Be so good as state very deliberately what they were?—I heard him say, he was one of those who invented the air-gun, to assignate his majesty—to shoot his majesty.

Did you put any question in consequence of his saying that?—Yes, I asked him what it was like; he told me the arrow was to go through a kind of tube by the force of inflammable air.

Did he describe the arrow?—Yes; he described it like one of our harpoons, which we kill whales with.

The harpoon is a barbed instrument?—
Yes.

Did he explain the properties of the barbs of the arrow, that was to be used for this purpose?—I do not rightly recollect any farther than that.

State any other expressions you heard from him relative to the same subject, or relative to the king of England, during his imprisonment there?—I do not rightly recollect.

Did he use those expressions you have mentioned, once, or more than once?—I heard him talk of the gun several times.

This was a conversation with yourself?—Chiefly with myself.

Do you recollect any songs that he sung?

Mr. Adam.—Does your lordship think that is evidence.

Mr. Garrow.—I mean to state that they were seditious.

Lord Chief Justice Eyre.—I think you had better forbear that examination.

Mr. Garrow.—You told us you found him at Brest, by the name of Crossfield—How long did you continue in prison at Brest, the prisoner passing by the name of Crossfield?—Till we came away.

In what manner were you to be brought from Brest to this country?—By a cartel which came from the West Indies.

When the cartel was ready, and you were about to be transferred into that, what name did the prisoner assume?—The name of “H. Wilson.”

Who made out the muster list for the purpose of transferring you from the French ship into the other?—He was one himself.

Had he acted at all as muster master?—Not at all, any Englishman used to write the names—he stood at the gang-way, and put the people’s names down, and he put down his own name “H. Wilson,” the first or second name.

Did you hear the persons called over according to the list?—We had not the muster list called over; I saw that wrote in it.

Did he embark in the cartel by the name of Wilson?—He did.

The ship out of which Crossfield was taken was the Pomona?—It was.

Was he described in the list as H. Wilson of the Pomona or as of any other ship?—As of—“the Hope.”

Mr. Adam.—Your lordship observes the witness is now giving parol testimony of a writing.

Lord Chief Justice Eyre.—This paper I apprehend ought to be in some public office?

Mr. Attorney-General.—It is left in France.

Mr. Adam.—Do you know what became of that muster list.

Witness.—I do not; I believe it goes to the representative of Brest.

Mr. Garrow.—Was any profession described?—It was “H. Wilson, of the Hope, a passenger taken by the same vessel.”

Did you hear any other disrespectful or seditious expressions from the prisoner, respecting his majesty, that you recollect, while you were at Brest?—I do not recollect any others.

Lord Chief Justice Eyre.—The whole is, he absconded; and when he was to return to England, he assumed a feigned name. I do not think his not being a loyal subject is evidence against him upon this case.

John Le Bretton cross-examined by Mr. Adam.

Do you know any thing of your own knowledge with respect to the manner in which this muster list is disposed of?—I cannot tell.

For any thing you know, this muster list is sent over to the Admiralty of England?—It may be for what I know.

Are you sure you read this muster list with attention, at the time you have been speaking to?—I am sure that I both saw and read it over.

And you can charge your memory correctly at this distance of time with what you have stated?—Yes.

What was your situation on board the Pomona?—Boat-steerer.

What was the number of the Pomona’s crew?—Twenty-three, I think, the captain included?

What was the captain’s name?—Charles Clarke.

Did he continue a prisoner in France with you all the time?—He did.

Did he come back in the same cartel ship with you to England?—He did.

Have you seen him frequently since you came back to England?—I did a good while since.

How long since?—Never since last Christmas.

Were you examined before the privy council upon this business?—I was.

Was captain Clarke examined before the privy council?—I believe he was not.

Did he attend at the time you attended?—Not at the privy council he did not.

Have you seen him since your examination before the privy council?—Yes.

Where?—In London.

In what particular place?—At the solicitor’s. Mr. White’s.

Have you ever seen him in any other place?—Yes.

Where?—On board his ship.

Have you never seen him at any house on the banks of the river Thames?—I have at his lodgings in Wapping.

Where were his lodgings in Wapping?—By Gun-dock.

Who is the landlady of the lodgings at Wapping?—I do not rightly recollect the name.

Should you recollect the name if it were mentioned to you?—I should.

It is not a very uncommon name, you know?

—I do not know for that.

Was the name White?—No.

Thompson?—No.

Was it Williamson?—No.

Was it Smith?—No, it was not.

His landlady's name then is not Smith?

—Not at the last time he came to London.

But since your return from captivity, have you seen him at Mrs. Smith's at Wapping?

—Yes; I was there once or twice with him, but he did not lodge there.

Do you know Mrs. Smith of Wapping?—No farther than just by calling there with him.

When was it you saw him two or three times at Mrs. Smith's?—At the time he was fitting his ship out, after his return from France.

Had you any conversation with him at that time upon this subject?—I cannot rightly say that I had.

Then if any body were to come and say that you had conversation with him upon this subject at Mrs. Smith's at Wapping since your return from France, they must of course not be speaking truth?—No; I do not know that they could.

Then for any thing that you recollect, you may have had conversation with him at Mrs. Smith's at Wapping?—I might have talked to him.

I am not asking you about general conversation; but whether you talked about Mr. Crossfield the prisoner?—I do not recollect.

Your recollection is very accurate to the words Mr. Crossfield spoke, and to words you read in a paper, and both those things happened a great while before this meeting at Mrs. Smith's at Wapping. I ask you, upon your oath, do you not recollect any conversation you had with captain Clarke at Mrs. Smith's at Wapping, since you came back from France, upon the subject of Mr. Crossfield and upon this accusation?—I do not.

Will you positively take upon yourself to swear you never had any?—No farther than I told him I had been examined before the privy council.

Then now you recollect that you had been examined before the privy council, and that you told him so?—Yes.

In consequence of your telling him that you had been examined at the privy council, did nothing farther pass relative to Mr. Crossfield?—No, it did not.

Did you not ask him whether he had not overheard Mr. Crossfield say such and such words upon the subject?—No, I did not.

I put it to you again, and recollect that you are upon your oath. You say you do not recollect having had any conversation with captain Clarke about what captain Clarke must have overheard pass between you and Mr. Crossfield, upon the subject of this accusation?—No, I did not.

Neither at Mrs. Smith's nor any where

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else, since your return from France, nor since your examination at the privy council?—I did not; nor captain Clarke never was so inquisitive as to ask me.

Nor were you so communicative as to tell him?—No.

How often might you see captain Clarke at Mrs. Smith's?—I do not know that I called there with him above two or three times.

Is he your captain now?—Yes.

Where is he now?—He may be on the coast of Africa for aught I know.

How long is it since he left England?—At Christmas last.

When did you return from France?—I believe we landed the 1st or 2nd of September, I cannot say for a day or two.

I think you told us Mr. Crossfield came on board the ship at Portsmouth?—I did.

And that you sailed upon the 13th from Falmouth?—Yes; and were taken upon the 15th.

What day did you sail from Portsmouth?—On the 29th or 30th, I cannot say which.

How long had Crossfield been at Portsmouth before you sailed?—He came on board us about a week before we sailed.

And you knew him by the name of "the doctor;" for aught you know your captain might have known his real name?—He might.

During the time that the ship lay at Portsmouth, before she sailed from St. Helen's, were you frequently in company with Mr. Crossfield?—At meal times.

Did you ever come on shore with him?—He was on shore two different evenings with me, at Portsmouth.

Who came on shore besides him and you?—The boat's crew.

How many might that boat's crew consist of?—Five men.

Did you come on shore together?—Yes.

Did you go to places of public resort?—No.

Mr. Crossfield went publicly about the streets with you?—Yes.

This was in the month of January?—Yes.

You were driven into Falmouth?—We went into Falmouth.

What was the ship loaded with?—Casks of water, and provisions for the voyage.

Do you mean to say upon your oath, that casks of water and provisions for the voyage, were all that the captain and the ship's crew had laid in, for the purpose of trafficking to the South Seas?—No.

What was there besides?—The captain's private trade.

What did that consist of?—I cannot say.

Had not your private trade of your own?—Nothing but two dozen pair of stockings.

Did not the private trade of the captain and the crew consist of jewellery, trinkets, watches, and other articles?—He had something of that kind.

And to a considerable value?—Yes, I believe he had.

You put into Falmouth by stress of weather?—By the wind getting on to the westward, and we were afraid to stay at sea, on account of the French.

What day did you put into Falmouth?—I believe it was the 2nd of February, I cannot say rightly for the day, having lost my journal.

You sailed the 13th, and remained ten or eleven days at Falmouth?—Yes.

Did you remain some time in the harbour?—We went to the Roads.

Were you frequently on shore?—Yes.

Was Mr. Crossfield frequently on shore at Falmouth?—He was never on shore more than once, if he was that.

That you are positive to?—Yes.

Were you on shore with him at that time?—I cannot say that I was.

You cannot tell how long he remained on shore?—I do not know that he was on shore at all; if he was on shore, it was not more than once.

If you do not know that he was on shore, you cannot take upon yourself to say any thing about it?—No, I cannot tell whether he was on shore or not, because I do not know any thing about it.

You sailed upon the 13th, and were captured upon the 15th?—Yes.

As soon as you were captured, were you all put on board the corvette?—No.

How long was it before your being put on board the French ship, after your capture, and being carried into Brest?—From the 15th to the 23rd.

During that time, what sort of weather had you?—Pretty moderate for the time of year.

How many English prisoners were there of you altogether on board that ship?—There were none but our ship's crew at first.

Do you recollect any scheme upon the part of your ship's crew to take possession of the French ship?—Yes, I do.

Who was concerned in that scheme?—We were all concerned in it, as far as I know.

Captain Clarke was concerned?—He was.

You were concerned?—Yes.

Mr. Crossfield was concerned?—I believe he was.

And that was between the period of your capture and the period of your getting into Brest?—It was about three days after our capture.

How did that scheme fall?—By one or two being disheartened, and the prisoners we took from other ships being outlandish men, and not agreeing to it.

Will you swear that Mr. Crossfield was not one of the foremost in that attempt; was he not ready to enter sword-in-hand into the cabin, to make that rescue?—I was not in the cabin, and I cannot pretend to say what I did not see.

Where were you first taken to, when you went into Brest harbour?—Into the Roads.

Did you go along-side any other English ship?—No.

Had you any intercourse with the English prisoners of other ships at that time?—Not until we got on board the prison-ship.

You were removed from the ship in which you were taken into a prison-ship?—We were.

Did you meet any English prisoners in that other prison-ship?—Yes, numbers.

Do you recollect the names of any of them?—No, not rightly.

Was not Mr. Crossfield carried on board the prison-ship with you?—He was.

What was the name of that prison-ship?—The Elizabeth.

What ship lay along-side the Elizabeth, the nearest ship?—I cannot rightly say what was the nearest ship to us.

Do you remember the L'Achille?—Yes.

Was not she close to you?—Pretty near hand.

Was not the Normandy close to you?—She was pretty near.

I need not ask you whether Mr. Crossfield speaks French?—He does.

Did not he serve in common as an interpreter between the prisoners that could speak French, and those who could not?—Sometimes he did; there were several that could talk French.

Do you know any of the English sailors that were on board the L'Achille or the Normandy?—Not the particular ones.

Do you remember any captains?—Not the know their names; I should remember them if I saw their persons.

Do you remember captain Yellowley?—Not in particular; there was a captain Yellowley, who was captain of the transport we came over in; he was not on board the prison-ship.

Where did you meet him?—In Landernau river.

Do you remember Mr. Cleverton?—I do.

Where did you know him?—He was taken by the same ship, two or three days after we were.

Did he come on board the same prison-ship with you?—He did.

Did he stay on board that prison-ship, the Elizabeth, during the whole time Mr. Crossfield and you were on board her?—He did.

Mr. Crossfield, of course, was acquainted with him?—For aught I know he was.

You did not mess with Mr. Crossfield, at this time, did you?—I did not.

Do you know whether Mr. Cleverton messed with him?—I believe he did.

Do you know captain Collins?—There was a captain Collins there.

Was he on board the Elizabeth prison-ship?—I do not know; I remember a person of that name being there.

You were afterwards removed from the Elizabeth prison-ship to another; what ship were you removed to?—The ship I went on board of was the Peggy.

What ship lay along-side, next the Peggy?

—The Active Increase; they were lashed along-side each other; they lay so close that I jumped from one to the other.

And they were both used as prison-ships?

—They were.

Did Mr. Crossfield go on board the Peggy with you?—He was on board the Peggy.

Was Mr. Cleverton on board the Peggy?—He was.

Was captain Yellowley on board the Peggy?—I do not know that he was.

Was captain Collins on board the Peggy?—I do not remember any such name on board the Peggy.

Do you remember such a name on board the Active Increase?—I do not.

Captain Clarke was on board the Peggy?—He was.

Now, from the time you were removed from the Elizabeth prison-ship, in Brest harbour, to the Peggy and Active Increase in Landernau river, till you came back to England, Crossfield, yourself, Clarke, and Cleverton, were all on board the same ship?—Not all the time, they were not.

But the greatest part of the time?—I cannot say how long.

At what time was any one removed?—Mr. Cleverton was sick, and at the hospital, for some time.

I believe, when any prisoners appeared to be sick, or stated themselves to be sick, they were immediately taken from on board the prison-ships to the hospital on shore?—Yes.

So that if any of the prisoners on board these ships were taken with an accidental sickness, they were removed to the hospital?—They were carried to the hospital on shore when they were very bad.

Were they not carried on shore when there was any reason to suspect they had any disease?—They let them be pretty bad first, and then they were taken on shore.

After Mr. Cleverton recovered, he came back to the prison-ship?—Yes.

And then he remained on board the Peggy till you all embarked on board the cartel for England?—Yes.

Who commanded the cartel?—Captain Gallowley, or Yellowley, I do not know whether his name is with a Y or a G.

Was captain Collins on board the cartel?—I cannot tell whether he was or not; there was a captain Collins, who commanded one of the transports there.

Long before the return of the cartel, you knew that the person who was called "The Doctor," was Mr. Crossfield?—Yes.

And so did all the ship's crew?—I cannot pretend to say that; I saw his name wrote, and I saw him.

I think you said that he continued a prisoner under the name of Crossfield till you came away?—Till nearly we came away.

Of course he was known as a prisoner by the name of Crossfield?—By the name of "The Doctor," in general.

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But any body that chose to be satisfied about his real name, would know his name was Crossfield?—Yes, there was no secret about it.

You said the captain's private trade and your private trade consisted of some cotton stockings?—Yes.

Did they take up any considerable room in the ship?—I cannot say they did.

They were easily stowed away?—There were three or four large trunks.

They could have passed perfectly well for the clothes and wearing apparel of the persons to whom they belonged?—I do not know for that, because a person could not wear a considerable number of stockings and all that.

Upon your oath, were not those articles conveyed on board the prison-ships, and made the subject of sale, by the different persons who had been taken prisoners?—There was a trifle which they had, which they broke open.

There was a trifle taken and sold?—The ship's crew got them among them.

Was there any quarrelling and any dispute about them?—I do not remember any.

Do you remember Mr. Crossfield making any observation about it?—I do not.

Had you never any words with Mr. Crossfield upon that subject?—I never had any words with Mr. Crossfield to my knowledge.

You are perfectly sure that there never were any words between you and Mr. Crossfield upon this subject?—I do not know that I ever had a word in anger with him.

Did you ever hear him tell the people that had those stores, that he would inform the underwriters that they never had been captured?—I never did.

Thomas Dennis sworn.—Examined by Mr. Wood.

Were you chief mate of the Pomona?—Yes.

Did you sail in her from Portsmouth?—Yes, the latter end of January.

Do you remember the day?—No; I believe between the 29th and 31st.

Did the prisoner sail in the ship with you?—He did.

In what capacity?—As surgeon.

What name was he called by?—I did not rightly know his name; he went always by the name of "Doctor."

How soon did you know his name?—Not till we got into France.

Was the Pomona captured?—Yes, on the 16th of February, by the La Vengeance, a corvette.

Where was she carried into?—Into Brest.

Had you ever seen the prisoner before he came on board at Portsmouth?—Never.

In the course of your voyage, did you ever hear him say any thing about what would be done if it was known where he was gone?—Yes; the night after we sailed from Falmouth, he said "if Pitt knew where he was, he would send a frigate after him;" moreover "that

Pitt would have been shot, only he crossed some bridge in the room of Westminster-bridge;" the bridge I have forgot.

Did you ever hear him say any thing about his majesty?—Yes; I heard him say "his majesty was to be assassinated at the play-house with a dart blown through a tube, and that he knew how the dart was constructed."

Did he tell you how it was constructed?—No, I heard nothing farther about the dart.

Did he say any thing about the form of it?

No, I never heard him mention any thing about the form; I believe he mentioned something about "its being in the shape of a harpoon;" but I cannot tell particulars.

Did you hear him say any thing more upon that subject?—Nothing more about the king.

Did you understand from him what was to be done with this dart?—No more than he said "his majesty was to be assassinated by it."

Did he say any thing about the construction of the tube?—No farther than "that the dart was to be blown through a tube."

After the capture, did you hear him say any thing about his being glad to leave England?—When we were first taken, Crossfield took me by the hand, and said "he wished I might get a ship safe to England; he was glad he was going to France, and was happy he had got out of England."

On your arrival at Brest, was there any muster taken?—Yes, the list of prisoners was made out, and sent on shore.

Did Crossfield sign his name?—Yes; "R. T. Crossfield;" and he said "he had no occasion to be ashamed," or "to be afraid," I am not sure which, "of his name now."

How long did he go by that name?—All the time he was in France.

Did he change it to any other name?—Yes; the day the list of prisoners was made out to be sent to England, he changed his name to "H. Wilson."

Did you see the list in which the name of H. Wilson was entered?—Yes, I over-hauled it; it mentioned "his being captured in the Hope Brig," instead of the Pomona.

By what ship was it mentioned he was captured?—By the same ship, the La Vengeance.

Was that in his own hand-writing?—Yes.

Did you hear the list called over?—I did.

Who called it over?—The commissary from Brest.

What name was he called by?—H. Wilson.

Did he answer to that name?—Yes, and he walked aft directly.

Were you the person who gave information to the magistrate of Crossfield?—No; I heard of it upon the road, as I was coming from Cornwall to town, at a place called St. Austle, or at Bodmin; at Bodmin, I believe.

Whom did you inform of this?—I was subpoenaed before the privy council.

But to whom did you give intelligence of what had passed?—To nobody; I never mentioned it before.

You did not go before any magistrate?—No; I never mentioned his name to any body till I was subpoenaed; I was going to sea the next day.

Thomas Dennis cross-examined by Mr. Gurney.

You sailed from Falmouth on the 13th, and were taken on the 15th—How many days were you upon your voyage to Brest, after you were taken?—I believe we got into Brest on the 22nd or 23rd.

Then you were seven or eight days upon your voyage?—Yes.

Do you recollect any plan being formed in the course of that voyage, among the English prisoners, to seize the French ship?—I do.

Were you concerned in that plan?—Yes.

Was captain Clarke concerned in it?—Yes.

And Mr. Crossfield?—Yes, I believe he intended to be one.

In fact, you all meant to rise upon the French, and to seize the ship?—Yes.

Were you of that party in which Mr. Crossfield was to be?—The people were to be upon deck, and those in the cabin were to seize the arms in the cabin.

You were put on board the Elizabeth in Brest harbour?—Yes.

Near which there were the L'Achille and the Normandy?—Yes.

The corvette took another vessel after she had taken you, before she got back to Brest?—Yes.

What was the name of that other vessel?—The Hope brig.

Who was captain of her?—Mr. Faulkner.

Was Mr. Cleverton on board that vessel?—He was.

Was he put on board the Elizabeth with you and Mr. Crossfield?—He was.

How long did he remain on board the Elizabeth?—As long as we staid.

Were captain Yellowley and captain Collins on board the Elizabeth?—No.

They were captains of cartels?—Yes, in Landernau river.

The Active Increase was close to the Peggy?—Along-side of her.

Captain Yellowley and captain Collins were captains of two cartels near you?—Yes.

You had access to these vessels?—Sometimes.

Mr. Crossfield, after some time, left the Peggy?—Yes.

On board what ship did he go?—One of the ships in which captain Collins, captain Yellowley, or captain Alexander were—I cannot tell which.

Who was captain of the Active Increase?—Captain Fearnley; he died.

You were enabled, by the politeness of the French captain, to save some part of the private trade of the captain and of yourselves?—Yes.

What did that private property consist of?—Stockings, chiefly.

Some watches?—The captain saved some watches.

And jewellery, some trinkets?—Yes.

Was this property insured?—I do not rightly know.

Do not you know that?—I had none of my own insured.

Do you not know that captain Clarke's was insured?—I have heard it was.

These articles were afterwards the subject of traffic on board the prison-ship, were they not?—Yes.

You recollect some observations being made by Mr. Crossfield, respecting this being a fraud upon the underwriters?—Not to my recollection.

Try and rub up your recollection a little?—It never concerned me.

I ask you whether Mr. Crossfield did not expressly charge you and captain Clarke with defrauding the underwriters, by the sale of these articles?—Never me; he did not charge me.

Did you never hear him charge captain Clarke?—No.

Had you never any words with him upon the subject?—No.

That you are sure of?—Yes.

Then if any body should swear that you had, they will swear what is untrue?—Yes, if they swear I had any words with the doctor upon that subject.

Or he any words with you?—Or he any words with me.

Was there no quarrel between you and Mr. Crossfield while on board that ship?—No, I do not rightly know; I never exchanged fifty words with him to my knowledge, all the time we were in France.

How many did you exchange with him before you went to France, fifty more?—I cannot say.

Perhaps you were not in habits of great intimacy?—My station was on deck; his station below.

Did any words pass between you, respecting any negligence of your's, by which the ship was taken?—Never, to my face; I heard he had said so behind my back. I was informed so, I never heard it from himself.

Did you never talk with him upon that subject?—No.

You are sure of that?—Yes.

Are you quite sure that it was not on account of disputes and quarrels between you, Mr. Crossfield and Le Bretton, that Mr. Crossfield was removed on board another ship?—No there was not.

There was no disputes between you, Le Bretton and Mr. Crossfield?—No.

That you are quite certain of?—Yes, I am.

You understood that Mr. Crossfield, behind your back, had blamed you for the capture of the ship?—Yes, I heard he had said it was my fault that the ship was taken, my not making sail; but he never mentioned that to my face.

Mr. Crossfield I believe lived constantly on board the Elizabeth with Mr. Cleverton, captain Clarke, and those persons?—He did.

He messed with them?—At the same table.

Was he in considerable intimacy with any of them?—Not remarkably, that I took any notice of.

However he did daily and hourly associate with, and mess with them?—Yes.

You were raiserably off in these prison-ships for want of provisions?—No, I cannot say I ever wanted provisions while I was there.

Had you never any bad provision there?—Yes.

Bad provision and confinement were not very pleasant to you I suppose?—No.

Did you ever take any steps whatever for getting your liberty?—No.

Did you ever state to the French, either directly or through the medium of Mr. Crossfield, that you were an American?—Yes.

Did you forge a certificate of your being an American?—I did not forge any.

I do not mean to use an offensive word: you did write a certificate purporting that you were an American?—I wrote to the consul.

Did the consul give you any assurance that he would endeavour to pass off that certificate for you as an American?—Mr. Crossfield told us before we got to France, that he would procure us all our liberty.

Did not he state that he was a naturalized Hollander?—Yes, he wrote that.

Do not you recollect that he wrote to Leyden, to ascertain that he had a diploma from that university, and therefore was a naturalized Hollander?—I recollect he wrote to some place, but what place I cannot say.

Was Mr. Crossfield a man of the most grave and serious deportment imaginable?—No.

I believe he was very much the contrary?—He was a man that drank very much.

I mean was he a man of grave deportment, or of a good deal of levity?—Very much levity in talking.

Talking and rattling a good deal?—Yes.

You hardly knew sometimes whether he was in jest or earnest?—Indeed I did not pay much attention to him.

On that very account?—No; from his bad principle altogether.

Lord Chief Justice *Eyre*.—If the prisoner had chosen to have staid in France, might he not have staid there?—I cannot say.

Lord Chief Justice *Eyre*.—Did they oblige the crew to go on board the cartel ships, if they had expressed any inclination to stay?—I never heard any body say they had an inclination to stay.

Mr. James Winter sworn.—Examined by Mr. Fielding.

You were I believe master of a vessel called the *Susanna*?—I was the owner of both ship and cargo.

On your passage from Newfoundland you were captured?—Yes; by a French frigate and two sloops of war.

Were you carried into Brest by this French frigate?—I was.

You came from Newfoundland?—Yes; and was bound to Spain or Portugal.

Do you recollect the time when you arrived at Brest?—I was taken on the 6th of December, and arrived at Brest on the 13th I think.

What became of you when you were carried to Brest?—I was on board a prison ship some time, and afterwards was removed into Brest Castle.

During your being at Brest, did you at any time see Crossfield the prisoner?—I was carried on the 20th of March up Landernau river; there were three English cartels lashed together, I was put on board one of them.

Were you on board any ship where you saw Crossfield?—Crossfield came on board the ship I was in, I think on the 2nd or 3rd of April, it was the beginning of April.

On board what ship did he come to see you?—The Revolution Brig, captain Yellowley.

Did any thing pass between you at that time?—Captain Yellowley introduced him to me, as Mr. Crossfield; he said, "his name was not Crossfield, but Tom Paine," and laughed.

What did you say to him, upon his saying that?—I said nothing to him; after he had been at supper he began to sing some very bad seditious songs.

Did any thing afterwards pass relative to his majesty the king of England?—Yes.

What passed on that subject?—He said "he shot at his majesty, but unluckily missed him."

Did he say where?—He said it was "between the palace and Buckingham-house." I asked him some time after, when he and I were walking the quarter deck, where was you when you shot at his majesty? he hesitated sometime, and then said, between Buckingham-house and the Palace.

Did you continue the conversation with him upon this subject; did you ask him any other question?—No; it was his constant subject every day after dinner, and after supper; I dined and supped with him every day, sometimes on board one ship, sometimes another, for five months together.

Then, as you had a great many opportunities of hearing this gentleman's declarations, did you ever hear him say any thing more relative to his majesty?—Yes.

In the general, in what way did he speak of him?

Mr. Adam.—I hope your lordship does not think that any thing with respect to this man's conversation, that does not go to the point in question, is evidence.

Mr. Fielding.—Does your lordship call upon me to sustain the propriety of asking a wit-

ness questions of this nature?—having established the ground immediately relative to the charge, surely I am at liberty now to prove the deportment of this man, and what he has said, with respect to his majesty, at any other time, subsequent to that substantive evidence I have offered already.

Mrs. Adam.—My learned friend has only asserted his right, he has not argued it, and therefore, it would be idle in me to argue it.

Lord Chief Justice Eyre.—If it is pressed, after the fact is established, I cannot say that general conversation, importing his sedition and enmity to the king, is not in corroboration of the fact before stated; it is to be considered what effect even this declaration, now proved, will have; it is a declaration totally different from that which is proved by the former witnesses, and has no relation, indeed, to the particular charges in this indictment.

Mr. Attorney General.—I certainly shall not press it.

Mr. Fielding.—Did he say with what weapon he had shot at his majesty?—No.

Did he give any description?—He said he had a thing, which I understood him he had shot at him with, something as large as that candle-stick, and as long as the candle and candle-stick together, which was like a pop-gun, round and hollow, about a foot and a half long; he said, "he intended to put some poisoned darts in it; that he had shot at a cat and killed her; that the cat expired in a few minutes afterwards in great agonies;" he said, "it would kill any man at thirty yards distance, and nobody could perceive that he had done it;" this he repeated fifty times, while I was in his company.

When you were in company with him, were there other people in company with him also?—Yes there were nine of us dined together every day.

Was this conversation before other people too?—Yes.

And not confined to you?—No; except at certain times when he and I have been walking the quarter-deck, and we have talked it over together; he showed me in what manner they were made, with his finger in some wet upon the table; he stroked with his finger as if there were hairs in it; he said "they opened when it struck, and something flew out and let the poison in."

When the arrow penetrated the poison came out?—"That as soon as the arrow struck, the poison came out of the dart."

Had you any conversation about where he got the poison?—He said, "he prescribed it;" but I do not know the place where it was bought; he said, "he was the very person that ordered it to be made up."

What, do you mean the poison?—Yes, "the poison to be mixed."

Did he say what sort of poison it was?—He said, "he got it at a shop."

Did he say for what purpose he had got this poison?—To fire at his majesty. He

said, "he had fired at his majesty;" but he never said it was with that that he fired at him; he said, "he fired at him, but unluckily missed him;" I heard him say that fifty times; that, "he damn'd unluckily missed him;" sometimes he said, "it was very unlucky."

Was this description likewise given by him to the people who were present, when he dined with you, or was in company with you?—There was nobody in the cabin with me when he made that remark; the captain and some of them were gone on board the French Commodore, and some were on board the other ships; he and I were sitting at the table drinking some grog.

Did you, during those five months, ask him any farther explanation of those things or not?—No, I never did, I was afraid to do it; I only asked him one question when we were walking the quarter-deck together, where he was when he shot at the king? he said, "he was between Buckingham-house and St. James's;" after he had hesitated some time, he said, "I was between Buckingham-house and St. James's Palace."

Do you remember having any conversation with him in August?—Yes.

Did he say any thing about his wishes, relative to the people in London, and his majesty?—He said, "he hoped he should live to see the day when the streets of London should be up to his ancles in the blood of the king and his party."

Was this said in the presence of more persons than yourself?—Yes.

Do you recollect the names of any gentlemen who were present when he made this declaration?—Yes; I recollect one gentleman said, God forbid, matters may be done more easily.

Who was that?—Captain Yellowley.

Do you recollect any other persons, by name, that were present?—No, none else.

Did he say any thing about the chemist from whom the poison was purchased?—He said, "he went to the chemist's and ordered how the poison should be made up, and it was made up; that he made use of some, and shot at a cat, and the cat expired in a very short time, or in a few minutes afterwards."—I believe I made a mistake in saying it was in August, it was some time in July, I believe, that he made use of that expression about his majesty.

When this conversation had continued between you of his having shot at his majesty, did he say any thing of what became of himself, or what he was obliged to do?—He said, "he was obliged to make off immediately to Portsmouth, where he went on board a South-Sea-man, that in two or three days afterwards they fell in with a French frigate, and luckily were carried into Brest."

Did he say any thing about a pursuit being made after him by a king's messenger?—He said, "there were two king's messengers

after him—that he was pursued by two king's messengers."

When you first knew him at Brest, by what name did he pass?—By the name of Crossfield only. At the time he introduced himself as Tom Paine, he said he went by the name of Tom Paine on board some other ships.—When he was given in to the list to come home in the cartel, he entered his name as "Henry Wilson."

You have said there were several people in company with you at different times?—Yes.

Endeavour to recollect all the conversation that passed when he said he wished to see the streets of London flowing with blood?—That was his constant conversation all that night, till Captain Yellowley interrupted him, and said, God forbid, matters may be done more easily.

Was there any person else, in your company with Crossfield, who said any thing which drew an answer from Crossfield?—No; captain Collins, another time said, he should be happy if he could have the cutting off of the king, Pitt, and parliament.

Who said so?—Captain Collins said, he should be happy to have the cutting off of the head of both the king, Pitt, and the parliament.

What did Crossfield say, in answer to that?—He said, "have patience, have patience, I hope to have the cutting off some of them by-and-by myself." Captain Collins said, he wished to have the cutting off both king, Pitt, and parliament's head. Crossfield said, "have patience, have patience, I hope to have the cutting off of some of them by-and-by myself."

When did you leave Brest?—On the 27th of August.

In what cartel did you come?—I came along with captain Yellowley, in the Revolution.

Do you know how Crossfield came over?—He came in the same ship.

How long was he embarked on board that ship before you sailed from Brest?—He was not long on board, I was on board the French Commodore with him; he and captain Yellowley went on board the French Commodore half an hour or an hour before we sailed; when Crossfield and Yellowley came out from the cabin, Crossfield said, "every thing now is settled to my own satisfaction;" that was said upon the gang-way of the French Commodore.

What became of him after this declaration?—One of the captains, that was in the boat, held up his hand to stop him from saying any more.

What captain do you mean?—One of the masters of the vessel, captain Wyatt, or captain Lambton, I cannot say which; he farther said, at other times, that "the French had given him great encouragement, that they would provide for him;" he said that fifty times, but he never explained more than that.

What became of him afterwards?—Then

he went on board the cartel, and we sailed that very day.

How long were you upon your passage to England?—Three days.

During your passage, did any thing remarkable take place?—No, not a word, nor for many days before that, till the time we left the Commodore.

How came it that nothing passed between you?—He was very close, he did not offer to mention a word there; he never said a word, I think, from the 18th or 19th of August, until the very day he left the French Commodore; he never said a word, that ever I heard; he was always very close.

When you came to England where did you land?—At Mevagissy.

Did you communicate this to any body?—I immediately inquired at a public-house at that place for a justice of the peace; the landlord told me there was a justice at two or three miles distant, and he would go with me himself.

Did you go to this justice of the peace?—I went immediately, I was not ashore five minutes before I went to the justice's; when we came to his house he was not at home; I saw the justice afterwards, and laid an information against Crossfield.

What was done upon it?—He granted a warrant to have him apprehended; when they came down to apprehend him the next morning, the vessel was gone over to Fowey, he was pursued to Fowey, and was apprehended.

Mr. James Winter cross-examined by
Mr. Adam.

May I ask you what age you are?—Fifty-nine years of age.

You belong to Newfoundland?—I am resident at that place at present, but I was born in England, my family are at Newfoundland, and I carry on my business there.

And you happened to be captured and taken into Brest as a prisoner?—Yes.

At what time were you captured?—On the 6th of December, 1794.

You were brought on board this prison-ship after having been some time in Brest Castle?—Yes; on the 20th of March, I went on board the English prison ship.

You have mentioned the names of two persons on board that prison ship, captain Collins, and captain Yellowley?—Yes.

Can you recollect the names of any of the persons who used to mess with you at that time?—Yes.

Was captain Clarke one?—No.

Which prison ship were you on board?—The Berwick; captain Alexander, captain Collins, captain Yellowley, captain Lambton, William Byron, and Henry Byron, Richard Taylor, Crossfield, and me.

Where are those gentlemen now?—I do not know; captain Yellowley is in London, I believe.

Where is captain Byron?—I do not know. Where is the other Mr. Byron?—I do not know.

Did they come over in the cartel with you?—Yes, all of them.

You do not know where they reside in England?—No; I believe in Shields, some of them.

Did any body ever ask you where they reside in England?—No.

Have you never mentioned their names before?—Not to any justice, only to the gentleman at Mevagissy, I mentioned them all to him.

When you mentioned all of those persons to the justice, at Mevagissy, did you state that they had come home with you in the cartel ship?—Yes.

Did you tell him that they were the persons with whom Crossfield and you had been in company?—Yes; I did not mention them as if they had been of a party.

I do not want you to accuse those gentlemen, I only want to know whether you told the justice that all those gentlemen, you have mentioned, were constantly in your, and in Crossfield's society, at this time?—Yes; all of them excepting captain Alexander, and he remained there.

Those Mr. Byrons were very respectable men, were they not?—They seemed very well there.

They lived in the mess with you?—Yes.

Perhaps you thought nobody so respectable as yourself. These people all came over with you, and the magistrate in Cornwall, to whom you discovered this whole business, knew perfectly well that they had all come with you, and had all been in the society, in which those things you have mentioned had passed?—They did not remain in the vessel an hour after.

But they landed at Fowey?—Yes.

And they were part of the family that dined with you every day there?—Yes.

Do you remember captain Clarke?—I remember there was such a name, but I was not acquainted with him.

Did you never go on board the Peggy?—No.

You say, when you were first introduced to Mr. Crossfield, that he called himself Tom Paine; had you lived enough with Mr. Crossfield, at that time, to know his manner of life?—No.

Afterwards you came to know pretty well how he lived?—When he came to sing those songs I withdrew immediately, and went on board my own ship.

Were you enough acquainted with him to know that he accustomed himself to strong liquors?—Yes, when he could get it; but he could not get it there; he would drink it if he could get it.

How long was it from the time you first became acquainted with Mr. Crossfield till you came away?—About five months.

And he lived in intimacy with you, and those other gentlemen, all the time?—Yes; he dined and supped with those gentlemen every night, unless they happened to be on board the Commodore, or on shore.

Consequently, all those gentlemen lived with him too, all those five months?—Yes.

Therefore, every single thing you know they must have known, excepting the private question you asked him where he shot at the king?—They must have known the main part; there was nobody in the cabin but me when he told me about shooting at the cat with a dart. There was a little of the grog dropped on the table, he marked with his finger, and showed me in what manner he made it.

Do you remember any thing about the story of a hare? Perhaps you may think it odd you should be asked that question.—No.

You do not remember any thing of a story that used to entertain the company very much, about a hare jumping into your lap?—No, only into my arm.

What was that story?—I was coming through Uplime to Lime, in my way from Axminster; just as I got to a wall, I stopped to make water; as I was buttoning up the fall of my breeches, a hare came through my arm; I caught him by the leg and turned him round; it was about twelve o'clock at night; I threw him in over the gate, in among a parcel of dogs, and he remained there that night; and the next day, just as the parson was going away to church, the hare got out, and the dogs followed it all through Lime; there they caught the hare, and it was carried up.

Then you threw the hare over the wall among the dogs?—Yes.

How long did the hare remain among the dogs?—Till after dinner.

This was a story that used to amuse the company very much?—Yes; I have told it oftentimes.

What did you take this hare to be?—I could find nothing of him till after I was going to church; I was just got as far as the shambles when I heard the dogs out in full cry after the hare.

After she had lodged very comfortably among them for many hours?—Yes; after the bones had been carried out to the dogs, which, I suppose, drew the dogs out.

What did you tell those gentlemen you took this hare to be?—To be a hare.

How did you think this extraordinary hare could live so long among the dogs without being destroyed?—If you send to Lime, if any gentleman disputes my veracity, there they will get a voucher for it.

Lord Chief Justice *Eyre*.—The gentleman asks you what you took the hare for; I suppose he means to ask you whether you took her for a witch?

Witness.—They say the place is troubled; now I took it to be an old hare.

Mr. *Adam*.—Did not you use to tell those gentlemen, in the course of conversation, that you took this hare to be a witch, or the devil in the shape of a hare?

Witness.—No; it was an old hare that had been hunted many times by the dogs, and they never could catch him; if you want a voucher for it, if you send to Lime, you may get vouchers.

Lord Chief Justice *Eyre*.—Where did you throw this hare into?

Witness.—Over a place seven feet high, among a kennel of hounds, and it was twelve o'clock at night.

Mr. *Adam*.—Were you ever sworn before a jury before?—I have been upon a grand jury twenty-five years.

I ask you, whether you were ever sworn as a witness in a court of justice before?—Many times.

Lord Chief Justice *Eyre*.—A grand jury, where?

Witness.—In St. John's, Newfoundland.

Mr. *Attorney General*.—You raised a corps of troops in Newfoundland?—Yes.

Of how many?—During the American war I raised fifty; and during this war sixty-nine: I supported fifty men myself during the whole American war.

Richard Penny sworn.—Examined by Mr. *Abbott*.

You were master at arms of his majesty's ship *Active*?—Yes.

You were taken prisoner, and carried into Brest?—Yes.

What was the prison-ship you were on board of there?—The *Elizabeth*.

Was the prisoner *Crossfield* on board the same ship?—I know the prisoner if I see him.

Do you see any body there whom you remember to have seen on board the prison-ship?—I know the man if he stands up, in a moment.

Mr. *Abbott*.—Go down, and walk round among the people, and look for him. [The witness pointed out the prisoner.]

Do you remember hearing him sing a song; I do not ask what it was?—Yes.

Do you remember having any conversation with him the next morning, in consequence of having heard him sing that song?—Yes.

Did you say any thing to him, upon that occasion, respecting the king of England?—The song was, "Damnation to the king." I asked him what king? He said, "the king of England."

What observation did you make to him upon that?—No more.

What farther did he say relating to the king of England?—He mentioned something in the song about Mr. Pitt.

But what did he say next morning farther concerning the king of England?—I said, doctor, you never can be a true Englishman, to sing that song; he said—"he was one of the ringleaders of the three that attempted to

blow the dart at his majesty in Covent Garden."—If Mr. Crossfield does not remember me, I will put on my jacket I wore in the French prison with him.

Did he express any sorrow at being a prisoner in France?—No; he said "Tom Paine's works were the best works"—

Mr. *Adam*.—I submit to your lordship, whether we are to hear every part of this conversation?

Lord Chief Justice *Eyre*.—Having proved that the prisoner said he was one of the three who attempted to blow the dart at the king in Covent Garden, I take it to be within the rule the Court has already laid down, when a fact which does apply to the charge is proved, that what goes so far to the same subject as to be corroborative is evidence.

Mr. *Adam*.—My objection was, that the prisoner said Tom Paine's works were the best works.

Lord Chief Justice *Eyre*.—That, standing alone, would not be any thing, you must hear the sentence throughout: but you broke in just as something was coming that was material.

Mr. *Adam*.—Then, can Tom Paine's works be a subject for the consideration of the Jury?

Lord Chief Justice *Eyre*.—Certainly not; but if a man puts two things into one sentence, you must necessarily hear both, and reject that which does not apply.

Mr. *Abbott*.—What more did he say?—He said "Tom Paine's works were the best works he could buy; and that if ever he arrived in England he would attempt to do the like again."

When you returned to England in the cartel ship, did the prisoner return with you?—He did so.

Did he say any thing to you, on board that ship, as you returned home?—Before he came out of Brest he mustered me on board; I was close to the main-mast, on the Elizabeth's deck; and before we came in to Mevagissy, he said to me "Young man, was not you on board the Elizabeth?" I told him I was; he desired "I would take no notice of what was said on board of the Elizabeth."

How came you to give evidence upon this occasion?—For my king and country.

Did you give information to any body of this?—I gave information to a gentleman at Portsmouth?

Did you lay any information before any magistrate?—I swore it before a magistrate.

Lord Chief Justice *Eyre*.—How soon after you landed did you mention this at Portsmouth?—I mentioned it at Portsmouth to a gentleman on board of the Royal William; he persuaded me to go to Mr. Greetham, the king's solicitor there: I went as soon as I had an opportunity.

Richard Penny cross-examined by Mr. *Gurney*.

When did you first go on board the Eliza-

beth prison-ship?—On the 22d of December, 1795.

You found Mr. Crossfield on board that ship?—I did not.

On board what ship was he?—I understood he was on board a south-sea-man.

I am asking about the prison-ship—did you find Mr. Crossfield on board the prison-ship?—He came on board the Elizabeth.

How soon after you were there?—He came in March.

Then it must have been in December, 1794, not 1795, when you first went on board the Elizabeth?—Yes.

It was some months after you were on board the Elizabeth before Mr. Crossfield came there?—Yes.

How long was he on board that ship?—Above a month before he went up to Landernau.

How many persons were of the captain's mess on board that ship?—He messed close to the wheel.

Who were the persons in his mess?—One of the witnesses in the court was one that messed with him.

Point him out.—He is not here.

Do you mean Dennis?—Yes.

Was captain Clarke one?—I cannot rightly say.

How many were there of them in the mess?—Seven

Were you in that mess?—No.

You were on board the same ship?—Yes.

Did you talk with Mr. Crossfield?—No, only after that song.

Had you any conversation with him at any other time?—No, only those words upon the poop.

Had you any conversation with him at any other times?—No, because he went from the Elizabeth up to Landernau.

You were a month with Mr. Crossfield in that prison-ship—had you any other conversation with him than that which you have told us?—He declared more to me at that time.

I am asking whether he had other conversations with you besides that time?—Not after that time.

Richard Penny re-examined by Mr. *Abbott*.

You say he declared more to you; what did he declare more?—When we were coming home, he begged me not to say any thing about what he had said to me; after we were mustered on board the cartel, I saw Mr. Crossfield in very close conference with the French officer abast the poop, and they shook hands together; that was a gentleman that came from Brest.

Lord Chief Justice *Eyre*.—Have you any thing more to say?

[The witness gave no answer.]

Lord Chief Justice *Eyre*.—Did you hear my question?

Witness.—Yes, my lord.

Lord Chief Justice Eyre.—I am waiting for an answer; what did he say more?—I suppose your lordship has got down, that after he had sung a song, wishing damnation to the king, I asked him what king, and he said the king of England; that he said he was one of the ringleaders of the three that attempted to blow the dart at his majesty in Covent Garden, and that if ever he arrived in England he would endeavour to do the like again; that he said Tom Paine's works were the best works he could buy; that he desired me not to take any notice of what he said on board the *Elizabeth*, that he was one of the three.

Walter Colmer sworn.—Examined by Mr. Law.

You live at Fowey, I believe?—Yes.

Do you remember, on the 31st of August last, being employed to apprehend Crossfield?—Yes.

Who assisted you in apprehending him?—Mr. Stocker.

Where did you take him?—On board the cartel lying at Fowey.

Did he answer to the name of Crossfield?—He did.

Were you employed in carrying him to Bodmin gaol?—Yes.

Do you recollect having any conversation with him upon the road?—Yes; he said "he would give us a guinea to let him go, and take the irons from his hands; that we should only have a few shillings for carrying him to Bodmin, and he would give us a guinea each to let him go;" some time after that, he offered us two guineas each; I asked him what he would do with the driver, he told me "if I would let him have one of the pistols he would pop at him, and soon settle that business."

Lord Chief Justice Eyre.—You had pistols with you in the chaise?—Yes.

Mr. Law.—I take for granted you did not do what he desired; neither take the money nor lend him the pistols?—No.

Walter Colmer—cross-examined by Mr. Adam.

What state was he in, at the time you took him on board the ship?—That was in the morning; it was in the evening when we were going to Bodmin.

What sort of condition was he in then?—Whether he was in liquor or not I won't say for that.

Now, do not you think he was very much in liquor?—He might be a little in liquor, but I do not think he was very much.

Elizabeth Upton sworn.—Examined by Mr. Garrow.

You were the wife of a person of the name of Thomas Upton?—Yes.

Who has been under examination before the privy council?—Yes.

Where did you reside at the time you last saw your husband?—In Wapping.

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When did you see him last?—On the 22nd of February.

That, I believe, was on a Monday?—It was.

At what hour in the morning did he leave his home?—Between eight and nine.

Did you ever see him afterwards?—No, never.

Have you since seen any article of wearing apparel which he wore at the time he left his home?—No.

His hat, or any thing else?—Yes, I have seen his hat, the waterman brought it me the next morning.

What is the name of the person that brought it?—Thomas Annis.

He brought a hat which your husband had worn when he went from home?—Yes.

Had your husband given you any thing when he went from home the last morning?—He gave me a seal.

Was that a seal which he usually wore?—Yes, which he usually sealed his letters with.

Have you never seen him since?—I have not, nor heard of him.

Except by the information of this waterman?—Yes.

Have you any reason to know or believe that he is now alive, or do you believe he is dead?—I believe he is dead—I know nothing to the contrary.

Was he a man addicted to drinking, or a sober man?—I never saw him disguised in liquor in my life.

Lord Chief Justice Eyre.—I do not see the necessity of this evidence.

Mr. Attorney General.—I stated Upton's giving information as an accomplice, and I gave as a reason why I could not produce him here, his being dead.

Lord Chief Justice Eyre.—I should have taken it upon your assertion, not as a subject of evidence, that you do not call him, because he is dead. If that were controverted in any way to raise a question upon it, to be sure you would be at liberty to prove it.

Mr. Garrow.—If your lordship is satisfied that this is reasonable evidence of his death, we do not mean to go into any more of it.

Lord Chief Justice Eyre.—Certainly.

Mr. Garrow.—Do you know a person of the name of Crossfield?—Yes.

Do you see him here?—Yes.

Have you seen him, and seen him more than once at your husband's house?—I have.

Have you seen him there before your husband was examined by the privy council?—Frequently.

Do you know Mr. Palmer, the attorney?—Yes I see him there.

Have you seen him at your husband's house?—Yes, frequently.

Have you seen him there in company with the prisoner Crossfield?—Yes.

Be so good as look at this piece of wood [the model for the tube]; did you ever see this before?—I think I have seen them

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lying in the shop in my husband's house in Bell-yard.

Do you know a person of the name of Hill?

Yes.

Do you recollect seeing him at your husband's house?—I have seen him.

Did you see this brought to your husband's shop?—I saw something brought one night by Mr Hill which appeared to be like this—I believe this to be it.

Look at this [a long brass tube]; did you ever see this before?—I do not recollect that ever I did.

Cast your eye upon that paper; did you ever see that paper in your husband's possession?—I do not recollect to have seen any thing of this kind.

Elisabeth Upton cross-examined by
Mr. Gurney.

Where did you reside, Mrs. Upton, at the time you last saw Mr. Upton?—In Wapping.

Do you reside there now?—No.

Where do you reside now?—In Gray's-Inn-lane.

Have you lived there ever since you lost your husband?—Yes.

Mr. Attorney General.---It has been proved---I mean that evidence has been given to prove---that Upton was concerned with the prisoner in ordering certain materials for this instrument; I am now going to prove Upton's possession of such a thing, and his possession of the paper which contains the description and draught of a bearded dart.

George Steers sworn—Examined by
Mr. Wood.

Where do you live?—In Gatwood's-Buildings, Hill-street, Finsbury-square.

Are you a member of the London Corresponding Society?—No, nor never was.

Did you ever attend any of their meetings?—I did once unfortunately attend one meeting, with two fellow clerks of mine.

When was that?—The latter end of the year 1794.

In what month?—I believe it was about the month of August, but I am not certain.

Did you know Mr. Upton?—I knew him no otherwise than by seeing him the night I attended that meeting; I never saw him before nor since.

Did you sit near him?—Yes; and a fellow clerk of mine sat next to him.

What sort of a person was he?—I do not believe that I should know him otherwise than his being lame in one foot.

Did you observe any thing that he had with him?—I observed he held something in his hand which I thought from his being lame was a walking-stick.

Did you ask to see it?—No, not being a member of the society, I had no right to ask any person in the room any question whatever.

Did any body else ask to see it?—A fellow clerk of mine asked him what it was, but I did not hear him give any answer for what purpose it was intended.

Did he produce it?—He showed it him in his hand.

What was it?—I perceived by the light that it was brass.

Was it any thing like that?—[the brass tube] Yes; I made no particular observation of it, but from what I saw, it was in appearance the same as that; it is, I believe, the same thing as was produced to me before the privy council; I made no mark on it, I believe it to be the same from its appearance.

William Henry Pusey, sworn—Examined
by Mr. Wood.

Were you at the meeting of the Corresponding Society, with the last witness Steers, on the 16th of September, 1794?—I was with him but I cannot speak as to the time.

Do you remember being with him one evening in September 1794?—I remember being there at the time, which I suppose you allude to.

Do you remember being there one evening when Upton was there?—I do.

Do you remember seeing any thing particular under Upton's coat?—Yes.

What was it?—A tube.

Was it like this?—[the brass tube] something resembling this.

Had you any conversation with Upton about it?—Yes; I asked him what it was. I cannot say positively whether I spoke to him first or he to me; I think I asked him first what it was; I saw a bit of it sticking out from under his coat; he pulled it farther out that I could perceive it better; upon asking him what it was, he did not give me any answer, but shook his head in that manner, [describing it]; he did not tell what it was for.

Did you ask him what it was for?—I did.

Did he tell you, or refuse to tell you?—He did not say I won't tell you, but he shook his head and made no answer.

Lord Chief Justice Eyre.—Did you take any notice whether it was hollow or not?—I think it was hollow.

Lord Chief Justice Eyre.—Had you any opportunity of seeing the light through it?—No; but from the best of my recollection it was hollow.

Mr. Law.—Did it appear to you to be a hollow or a solid instrument?—I do not think it was a solid instrument.

Edward Stecker sworn.—Examined by Mr. Garraw.

I believe in the month of August last you were one of the constables of the borough of Fowey?—Yes.

Had you, together with Mr. Colmer, the charge of the prisoner Crossfield, to conduct him to Bodmin gaol?—Yes.

What is the distance from the place where

you took him into custody to the gaol?—About twelve miles.

You went in a chaise?—Yes.

State what conversation the prisoner addressed to you and your fellow constable in the course of your journey?—He offered us two guineas.

State what he said to you?—He said in the first place, "that it was better we should take a guinea each, and let him go," he said, "he was man enough for us both;" then he said "he would give us two guineas each," Mr. Colmer asked him what we should do with the driver; he said, "lend me one of your pistols, and I will pop at him, and settle that matter."

Was there any conversation as to the quarter from whence the money was to come, if you would accept of it?—None at all; he said, "he would give us a draft on some person at Fowey;" I asked him if he knew any inhabitant, he said, "he did not know any inhabitant at Fowey: that it was a person at Fowey, but not an inhabitant."

You conducted him safe to gaol?—Yes.

Edward Stocker cross-examined by *Mr. Gurney*.

At what time did you leave Fowey to go to Bodmin?—About nine in the evening.

Mr. Crossfield I believe was not very sober at that time?—I do not know.

Are you quite sure that Mr. Crossfield was perfectly sober?—I do not know that he was in liquor, he might or might not.

Are you not quite sure that he was not sober?—I am not sure; I do not think he was much in liquor.

Was not his manner of speaking very queer?—I do not know as for his manner of speaking.

Edward Stocker re-examined by *Mr. Garrow*.

You were not acquainted with Mr. Crossfield before?—No.

Had he had the means of getting intoxicated, as far as you know?—I do not know whether he had or not.

Did he appear sober enough to know what he was talking about?—I believe he was not disguised in liquor; I do not know that he was.

Mr. Gurney.—Did Mr. Crossfield sleep in the post-chaise?—He fell asleep after we came about half-way.

And slept on all the rest of the way?—Yes.

Lord Chief Justice Eyre.—At what time of day or night was it?—We set out at nine in the evening from Fowey.

Mr. Harvey Walklate Mortimer sworn.—Examined by *Mr. Garrow*.

You are a gun-smith, residing in Fleet-street?—Yes.

For how many years have you been engaged in that business?—Thirty years; thirty and a half I believe.

You have been used not only to the con-

struction of common fire arms, but to the construction of the air gun?—Yes.

Are air guns sometimes constructed in the form of a walking stick?—Yes.

Is it one of its properties to discharge and accomplish its object of destruction without explosion?—Not entirely without explosion; if it is discharged where the air passes briskly by, you cannot hear it yourself; but if it is in a confined room, where the external air does not pass freely by, it makes a noise like that. [clapping his hands together.]

It would make less noise in the explosion I conclude in a large theatre than in a small room?—Certainly.

It is another property of an air gun, to have less recoil than the explosion by gunpowder?—It has so little recoil, that if you were to hold it against your face with a glass upon your eye, you would not perceive it injure the glass.

You might rest it upon your cheek bone?—Upon your naked eye.

So as to take a most accurate aim?—I have shot with it so as to hit a nail twice out of thrice upon the head, and drive it through a board; I have used it when a gentleman has desired to hold a small thing between his finger and thumb while I have shot at it.

Perhaps it is not necessary to go too minutely into these discussions, unless it is thought necessary on the other side: do you apprehend that the tube of an air gun may be so constructed as to discharge an arrow, instead of the ordinary discharge of a bullet?—I am sure it may.

Cast your eye upon this paper, and tell me whether you think an arrow constructed according to that drawing might be discharged, and whether it would not be a dangerous instrument to be discharged by the explosion of an air gun?—Here is a drawing of two arrows, one of which is barbed, another that is not barbed.

Supposing the barbed arrow so constructed, as that the barbed parts of it might be made to collapse, and so to enter in that state the opposing body; and supposing something consisting of two barbs in the shape of an arrow, to be put in a collapsed state into an air gun and protruded by the force of the air, could it be forced out in its collapsed state?—It might; but as soon as it was out it would regain its native position.

You see no difficulty in putting a barbed instrument into an air gun to be exploded?—It depends upon the strength of the springs of the barb, if the springs are weak it might be done—but those springs could not act without a joint in the part near the end of the place where this barb is, they must act upon a joint.

We suppose it has every thing necessary to constitute a complete instrument?—It would undoubtedly expand again when it came out into the air.

Have you any doubt that an instrument so

constructed, projected by the force of the air gun, would occasion death?—I should have no doubt; I think it would be a dreadful instrument, if it was projected from an air gun.

Lord Chief Justice *Eyre*.—Can you give us any information concerning these two particular pieces of wood, that are supposed to be models of something?—This might be made for such an instrument as this; it might be made into a tube for a condenser, supposing this part to be left for the bore, to make a tube inside; I should think it too large; I should not think it well contrived.

Mr. *Garrow*.—Your knowledge of the science would induce you to make the bore smaller than that proposes it to be?—Yes.

Lord Chief Justice *Eyre*.—Is there any appearance of a bore in that model?—The two ends describe the bore.

Mr. *Garrow*.—And the larger part the external space?—It appears so.

Supposing I had wanted a cylinder of the external dimensions of the largest of these pieces of wood, and a bore of the size of the other; would not that drawing have enabled you to make it of the required thickness?—I should have some idea of it from this, but I should have asked a question or two as well as seeing this; this could never have been designed for the internal part of an air-gun, formed into a walking stick; if this was designed for a piston to condense the air, it must have been unconnected with the gun, and only have screwed on to it for the purpose of condensing it; I should have made my air cane or air gun, if I had made it, with the piston entirely in the hand, that nobody should have seen it; this, if it was made, must have been made to have been put on occasionally, not to have been in the hand.

Supposing such a piston to be applied to a brass tube, would it not become an instrument of death with such a barbed arrow as we have talked about?—This wood might be a model for making a piston to contain air enough in a brass tube to have expelled three or four times without re-charging such an instrument of death; I could have made one from that model, if I had been informed they wanted it made in that way, I could have so done it; but this is not well done.

Look at this paper, does that top appear to be a description of such a wooden instrument as this, though not a very accurate one?—Certainly, it does something like that; but it is evident that the person who drew this was not a master of drawing.

Lord Chief Justice *Eyre*.—Does it describe sufficiently these two pieces?—I have seen but one.

Mr. *Garrow*.—Look at the other part, and see whether that drawing describes this?—I think I should not have an idea of this form from this, it is drawn so very badly.

Looking at the two together do they appear, though badly described, to have such a correspondence that one may be made from the

other, with some verbal assistance by way of directions?—With verbal assistance it might, but I do not think it could be made without; I cannot say that there is any thing in it that is sufficiently like it for me to suppose it was made from this drawing, unless the person had some verbal directions besides; the top part is well enough described, the piston.

I observe the drawing you have in your hand has got additions to it; there are rather round parts which it is necessary to be made acquainted with the drawing to describe; but looking at that drawing, do you take that to be a drawing of the thing that you hold in your right hand? [the model]—If I had seen them together upon a table, I should not have supposed that this had been a drawing of this; and it could not have been a drawing of it without verbal explanations.

Lord Chief Justice *Eyre*.—The question is whether with verbal directions the two pieces of wood you have in your hand might have been formed from the hint given from that drawing?—Very indifferent drawings will do with verbal directions.

Lord Chief Justice *Eyre*.—Do you suppose that with verbal directions these two pieces of wood might have been formed from the hint given by that drawing?—I have no doubt of it.

Mr. *Harvey Walklate Mortimer* cross-examined by Mr. *Adam*.

If this brass tube had been put into your hands without any thing being said about it, should you have known for what use it was made?—It is impossible that I should have known what it was for, without any thing being said about it.

You have said you do not make air guns in this form?—We make them in a snugger and neater form.

Are you in the common practice of making air guns?—Yes.

And you make them like a common walking stick?—Yes; sometimes I make them in the shape of a common gun, sometimes in the shape of a pistol; I have pistols now in the shop.

Do not you make them in the form of a walking stick?—Yes.

And then you make them portable?—Yes.

Have not you made them frequently in that form for sale?—Yes; I sold one which his majesty sent as a present to the dey of Algiers, a little while ago.

So that the piston for the condensed air should lie within the cane?—Yes; I can make them either within it, or without it; I have made many guns with the piston within, and others without it.

You said that a barbed arrow might be put into a gun; but would not the consequence of firing it out of the gun be, that the moment the resistance of the sides of the cylinder of the gun are withdrawn by the arrow getting beyond into the open air it would open?—I have

some doubt about that; a barbed arrow may be put into a gun with a great deal of ease, but the end before you get to the point must be solid; at the end of that barb there are two joints, each of which will bend, but being bent only a little it will open; it will keep closed as it flies till it strikes a body, and when it enters the body, it will immediately open at the two parts where there are the joints, and it will let out whatever is in it; but in passing through the air, be it ever so far, it is not in the least injured, and if it were ever so full it could not be discharged of its internal matter till it struck the body; now that arrow could be easily made, and if the bottom part were made hollow you might put a little condensed air, so that whenever it strikes against any body it should force out what was in it, by the pressure of the air which was behind it; if it was so made it must be feathered, as that appears to be upon the drawing, but it must be feathered more than that, so as to press equally totally round the cylinder, and the pressure of the whole force of the air would be entirely upon it; I could with a tube which I take in my hand blow without any condensed air whatever, I could with my mouth blow an arrow of that sort, if within six or eight yards, with sufficient force to do a mortal injury to any man living: my men are frequently trying little experiments.

Lord Chief Justice Eyre.—Be content just to answer the questions; what is the precise question you asked him?

Mr. Adam.—He has answered to all that I wish to ask him; the object of my question was merely to know whether the arrow collapsed immediately as it comes out of the barrel, he says it does not.

Mr. Garrow.—Did you ever sell any of these walking sticks?—I did formerly to any that would purchase them; I have not for some years, I thought them dangerous.

Lord Chief Justice Eyre.—Looking at these two pieces of wood and at this paper, can you from their construction be able to inform the jury for what use these two pieces of wood were intended?—I verily believe for the purpose of an air gun.

Lord Chief Justice Eyre.—That is what you believe?—I do verily believe so; the use of them I cannot tell.

Lord Chief Justice Eyre.—An air-gun will, I suppose, carry an arrow, or shot, or a ball?—I can shoot a ball at sixty yards very strong.

Lord Chief Justice Eyre.—But your judgment is, that these two pieces of wood appear to be the models of that which is to make part of an air-gun?—Taking the tube and the models together, I am satisfied they were for an air-gun.

Lord Chief Justice Eyre.—What tube do you mean?—This long brass tube.

Lord Chief Justice Eyre.—Supposing the long brass tube was entirely out of the case, what do you say then?—It would be satisfactory to me that there was something of that

kind intended to be made, but not so satisfactory as with the tube; it is an additional evidence in my mind.

Robert Ward, esq. sworn. Examined by Mr. Attorney General.

You are a barrister at law, I believe?—Yes. I have occasion to ask you about Mr. Upton, of Bell-yard; it will not be proper to state any conversation, I will only ask you as to a fact.—Do you remember seeing Upton in August or September, 1794?—It was the 12th of September, 1794.

Have you seen these two papers before?—I am clear as to this paper with the drawing of the barbed arrow; I saw this in the possession of Upton, on the 12th of September, 1794. I am not quite so clear as to the other.

It was at Upton's house, I believe?—It was.

Did you happen to see this in Upton's possession?—I saw these models, but not the tube.

Robert Ward, esq. cross-examined by Mr. Gurney.

At what time did you communicate this fact to any of his majesty's ministers?—I think it was on the Friday when I saw this in the possession of Upton, and I think on the Saturday I waited on Mr. Pitt, but I did not see Mr. Pitt till the Wednesday following.

Mr. Attorney General.—Did you communicate it to any magistrate?—No; I did not see any body upon the subject, till I saw Mr. Pitt.

Mr. Attorney General.—We have closed the case for the prosecution.

Mr. Adam.—I beg to ask a question or two of Mr. Palmer.

Mr. Peregrine Palmer called again. Examined by Mr. Adam.

Do you know any thing of Mr. Crossfield's pecuniary circumstances?—Yes, I do.

In what circumstances was he at the time he left London?—His whole property was assigned over for the benefit of his creditors.

Was he in debt do you know?—Yes, he was.

Mr. Adam.—I think it right to inform your lordship, that I am afraid it is absolutely impossible for me to bring the case I have to lay before the Court, within such a compass as to give me the least hope of producing the evidence in favour of the prisoner, while the jury are able to give that attention to it which it is of importance to him they should give; but I am ready to do exactly what your lordship pleases.

Lord Chief Justice Eyre.—I am afraid we shall be under the necessity of going on, if there will be any prospect of finishing to-morrow. There is, I believe, no provision made for the jury.

Mr. Adam.—The same thing happened on

the trial of Mr. Stone,* and the Court adjourned.

Lord Chief Justice *Eyre*.—As far as concerns the capacity I should have to do the country and the prisoner justice, I should be glad of the accommodation of an adjournment.

Mr. *Gurney*.—The jury were accommodated with beds at the London Coffee-house, on the late trials.

Mr. *Adam*.—I do not speak with a view to any personal accommodation to myself; but because I am aware that the case which I have to lay before the Court, must necessarily take up so much time, as will make it almost impossible for human strength to go through it without an adjournment.

Lord Chief Justice *Eyre*.—I should be sorry, if by forcing you on, we should put you under any incapacity to do your duty. I find the sheriffs have provided lodgings for the jury. What do the jury say about it?

Several of the jury said, they felt themselves so much fatigued that they were persuaded they should not be able to give proper attention to the case of the prisoner unless the Court adjourned till the morning.

[It being now past eleven o'clock at night, four officers were sworn in the usual form to attend the jury, who slept at the London Coffee-house; and the Court adjourned to the next morning eight o'clock.]

Thursday, May 12th 1796.

The Court having been opened, Robert Thomas Crossfield was set to the bar.

DEFENCE.

Mr. *Adam* †—Gentlemen of the Jury; We are now come to the stage of this cause, when I am to address you on the part of the prisoner. I cannot but congratulate you and myself, that the measure of adjournment from the confusion and heat of the court last night, to the quietness and composure of this morning has taken place. I am sure, gentlemen, it is for the benefit of us all, that we come here with fresh recollections, with minds unimpaired by a long and a fatiguing attendance, in order to discharge this most important, this most weighty, and to me this most awful duty.

Gentlemen, I may say, and I can say it with truth and sincerity, *never before stood I in such a presence*. It has never happened to me in the course of my professional life, to

lead in conducting the defence of a prisoner upon trial for his life. Nor has it ever happened to me to be charged with the life of a prisoner tried for the crime for which the prisoner at the bar now stands indicted. Gentlemen when I mention this circumstance, I can assure you, and I can assure the learned and most respectable judges who preside on this occasion, that I make this declaration, not with a view of consuming your time, by any vain or particular application to myself; I do it, because I think upon this occasion, it will suggest that, which, if it were necessary to inculcate, I am sure I have much need of, namely, that the learned persons who preside here, will consider themselves as counsel for the prisoner. I know it is their disposition, I know it is the constant and general tenor of their practice; and I am sure that I stand in need, and my client, trusting his cause in my hands, stands in need of that aid.

As to you gentlemen of the jury, I confide in your having come here with a determination to consider this case impartially, patiently, and with that "integrity which is your true portion and proper virtue."

Before I proceed to state my observations upon the nature of the case, or upon the evidence as it has been laid before you, I will take the liberty of shortly presenting to you what I consider the question now to be tried.

Gentlemen, the prisoner at the bar is indicted for high treason, and the nature of the treason for which he is indicted is the compassing and imagining the death of the king. By the law of the land, as it was stated to you by Mr. Attorney-General, the will or intention to kill the king goes for the fact. That is to say, the intention of killing the king is as much a crime as if the fact were actually committed. And I agree perfectly with my learned friend, that it is impossible to conceive a wiser enactment. Nay, I enlarge upon his statement; for if that institution is wise for the purposes of monarchical government in general, it is particularly wise as applied to the government of this country. In this mixed monarchy, where the nature of our government gives a free scope to a variety of political opinions and modes of thinking, it becomes more particularly necessary to protect the person who unites, and fortifies, and binds together the general system and frame of our constitution. At the same time, however, that the legislature has been cautious, and has particularly interfered to guard the sacred life, on which I assert (with the same energy as Mr. Attorney-General) the safety of the state so much, so eminently depends; it has been most anxious to fence and guard the critical situation of the prisoner; to take care that he shall have a fair trial; and therefore, among other things, to lay down certain rules for the manner of assembling you in the place where you are now seated, and to regulate the principles which are to guide you in considering the evidence. Thus while the law

* See Vol. 25, p. 1295, and note.

† The very learned person who delivered this speech has obligingly furnished me with a correct report of it, which is here substituted for the inaccurate account given in the original printed trial.

and constitution wisely protect the crown against sudden attacks; the same law and constitution anxiously erect safeguards for the subject from illegal convictions.

Gentlemen, one of the safeguards of the subject is, that there shall be stated upon the face of the indictment, those *overt acts* or *open deeds*, which are supposed to have the tendency to accomplish the end in question. So upon the present occasion you have had it stated to you (and I will therefore only recite it shortly to you) that this indictment does set forth such *overt acts*; that it states, in the first place, a conspiracy between the prisoner and three other persons who are likewise indicted but who do not yet stand upon their trial, and persons to the jurors unknown, to prepare a certain instrument, to be loaded with a certain arrow to be sent forth from thence, for the purpose of taking away the life of the king. It likewise states the same overt act, but without laying it to be done in conspiracy with others. It likewise states overt acts of consultation, where they consulted and conferred together, for the purpose of taking away the life of the king. These are, generally speaking, the nature of the overt acts set forth in the indictment.

You will observe throughout, gentlemen, that there are two distinct propositions in this case. One proposition is, that there was an instrument prepared or ordered to be prepared; another is, the intent or the purpose to which that instrument was meant to be applied. These are in their nature distinct propositions: they are distinct propositions on the face of the indictment; and they are distinct propositions in the proof, as I shall have occasion afterwards to show you when I come to speak to the evidence.

You have heard upon this occasion that there have been various rules laid down by lawyers, relative to the manner in which evidence in a question of this nature is to be considered by a jury, but that there is no very difficult question of law upon the rules of evidence in this case, so that I shall have the happiness, I trust, of making myself distinctly understood by you.

My learned friend the attorney general derives his doctrines of the law of England, with respect to treason, from an authority to whom he paid the highest tribute of applause. To that authority no tribute of applause is too great.—I allude to Mr. Justice Foster, whose name, he truly said, would live as long as the constitution of England endured. I shall have occasion, in the sequel of what I shall be under the necessity of addressing to you, to have much recourse to the doctrines and to the learning of that eminent person; but now, in this stage of my address to you, I call your attention back to a more early period of English history and law, that I may show these doctrines to have continued from an early period, including the time when Mr. Justice Foster wrote, even unto this day.

Gentlemen, the act of parliament says (for this is an indictment upon the statute of 25th Edward 3rd) "When a man doth compass or imagine the death of our lord the king, and thereof be *provably* attainted of open deed, by the people of his condition, he shall be adjudged guilty of treason." This is, shortly, the part of the statute which relates to the crime in question, which I state to you separately from the other treasons enacted by that statute, in order that you may precisely and clearly understand, that the only question for you to try upon the evidence is, whether the person at the bar did compass and imagine the death of the king; and whether he "be thereof *provably* attainted of open deed." Now, gentlemen, the word *provably* has been upon all occasions, a word much relied on and commented upon in the construction of this act of parliament: the meaning of that word has received a most solemn, a most deliberate, and a most enlightened consideration from a person greatly eminent in the law of this country, from my lord chief justice Coke, who, in his commentary upon this statute, says—"By *provably*, is meant that it is upon direct and manifest proof, not upon conjecture, or presumptions, or inferences, or strains of wit, but upon good and sufficient proof; and herein the adverb *provably* hath a great force, and signifieth a direct plain proof, which word the parliament did use, for that the offence was so heinous, and so heavily and severely punished as none other the like; and, therefore, the offender must *provably* be attainted, which words are as forcible as *upon manifest and direct proof*: note, the word is not *probably*, for then common argument would do, but the word is *provably*, be attainted."

Such is the construction, such is the opinion given by sir Edward Coke, considering this statute deliberately in his closet—a person deeply acquainted with the principles of the law of England.—You see that he makes a great deal to depend upon the word *provably*: that he distinguishes most materially between the word *provably*, and the word *probably*; and he says, that on account of the severity of the punishment, and for the protection of the prisoner, the legislature meant that he must be attainted *provably* that is, by *manifest and direct proof*.

The commentary of this profound lawyer is now, by common consent (and it will be so stated to you from the Court) allowed to be the undoubted law of England—to be incorporated as completely into the constitution and the law of the country as any other maxim, principle, or declaration of the common law whatsoever.—Gentlemen, this, which was laid down by my lord chief justice Coke in his closet—this which has been recognised as the law of the country—this which is uniformly rested upon by judges and by juries, in all questions of treason, as the sound rule of construction and decision, was carried into effect, was realized and acted upon, by

another great luminary of the law, in a remarkable prosecution in the reign of James 1st—not indeed a prosecution for treason, but a prosecution in which sir Francis Bacon (to whom I allude) brings the doctrine home directly to the question of treason; so that the same principle which was laid down by my lord Coke privately in his institute, was adopted and acted upon in public court by my lord Bacon when he was attorney-general, at a time when he was addressing a jury impanelled, as you are now, to try a prisoner indicted by the crown.

My lord Bacon, in the trial of lord Somerset,* says, “The king hath given us in command that we should not expatiate or make invectives, but materially pursue the evidence, as it conduceth to the point in question; a matter that, though we are glad of so good a warrant, yet we should have done ourselves; for far be it from us, *by any strains of wit or art*, to seek to play prizes, or to blazon our names in blood, or to carry the day otherwise than upon sure grounds. We shall carry the lanthorn of justice (which is the evidence) before your eyes upright.” “I will speak somewhat of the greatness of the offence, not to weigh the prisoner down, but to show that a great offence needeth a good proof, for the offence, next unto high treason, is the greatest.”

In that case, my lord Bacon was speaking on the trial of a person for murder, but you see he brings the whole doctrine home to the question of treason. He observes, that the king had given it in command not to expatiate or make invectives; the rules of modern times, and the practice of the constitution now admit of no such allusions; I am sure, however, if they had been permitted, the monarch under whose government we live, who considers his own life as sacred only for the benefit of his people, would have given such a command, if according to the usage of these times, it had been regular so to do. I am sure, at the same time, that I do no more than justice to my learned friend when I say that such a command to him would have been unnecessary, for throughout all the opportunities that I have had of seeing his practice, in the eminent and difficult situation in which he stands, he has followed forth and copied the doctrine laid down by my lord Bacon.

Gentlemen, my lord Bacon brings his doctrine home to treason; he lays it down in a case of murder, but he says expressly that murder is the highest crime except treason; he may therefore be said to bring the doctrine of my lord Coke, with regard to the word *probably*, home to the particular point of treason; for he lays it down as doctrine, that in a question where there is a prisoner at the bar tried for his life, whether it be treason or whether it be murder, the evidence is not only “to be carried upright,” but he uses the very words of

my lord Coke, and says, that it is not meant by him to “use strains of wit, or arts, or to seek to play prizes.”

This gentlemen is the doctrine upon which this case must be determined; it is the rule by which this evidence must be judged, and I earnestly request of you to treasure it in your minds, for the purpose of applying it in the sequel of this case, when I shall have the honour of observing upon the evidence particularly to you; in the mean time, permit me to lay before you what the nature of this accusation is, tracing it from its source.

My learned friend the attorney-general has brought into your notice a person of the name of Upton, whom he has not been able to bring here to day as a witness. The indictment itself indeed brings Upton to your notice; and you have heard from the very best of all authority (namely, from the authority of Mr. Attorney-General) that if Upton had been examined here, he would have appeared to have been a person concerned in this crime, and discovering it to the government of the country. Such is the situation in which this person is represented to stand. I shall have occasion in the sequel to express my deep regret that that person has not been to be found and examined: In this part of the cause I present him to your notice merely for the purpose of calling your attention to the nature of the probabilities on which this case is founded; and I think I shall be able to demonstrate to you, on the one hand, that the probabilities are all against the existence of such a conspiracy as is here stated, and that, on the other hand, there is no proof, *probably given*, sufficient to establish a contrary conclusion; nor indeed any proof sufficient to satisfy your minds in a case of blood, in a crime such as this indictment sets forth, that there is a ground or foundation upon which to rest a verdict of guilty; but that it will be your duty to send the prisoner forth among his fellow subjects, to pass the rest of his life, I trust, in a conduct which will make it perfectly impossible even to impute to him any thing like that with which he now stands charged.

But I must call your attention, upon this occasion, to the particular character of Upton, founded on what has already been proved in part by the cross-examination of the witnesses for the prosecution, and which I will afterwards enforce by farther proof, direct and manifest, coming home to the very point, and to the very issue in question. I shall be enabled to lay before you evidence of the animosity and hatred which existed between Upton and the persons with whom he is supposed to have conspired, of whose actions, according to the case made by the crown, he was first the accomplice, and afterwards the spy. I shall be able to prove, that Upton was in a state of disagreement and hostile contest with Smith, one of those indicted for this treasonable conspiracy; of violent dis-

* Anti Vol. 2, p. 970.

ference with Higgins, another of them; and at enmity with Le Maitre, the third; that there was not any intimacy or confidence between him and the prisoner at the bar; for you will recollect that you have it proved by incontestible testimony, by the evidence of Palmer, that the prisoner had been but for a very short time at all acquainted with Upton.

Now, if I can establish to you that he who was directly at enmity with Le Maitre, that between them the hostility had gone to such an extent, that Upton had sent Le Maitre a challenge to fight: If I prove to you,—what has not been denied by some of the witnesses for the prosecution,—his animosity to Higgins, and that in fact an inquiry was commenced with great form in the society, and was carrying on with great diligence, which had for its object Upton's expulsion from the society;* I ask whether, under such circumstances, the probability is not strong against the existence of such a conspiracy?—whether you can suppose conspirators not only not intimately acquainted, but hardly acquainted at all?—whether in the case of men as little acquainted as these men were, and living in a state of direct enmity, you can suppose the confidence of conspiracy to exist?—I ask again, is it possible that such a proposition can, consistently with the common rules of human action, gain belief? If I prove these things,—and I pledge myself so to prove them,—I then call upon you for this necessary conclusion, that the grand foundation, the principal ground work of this great crime, namely, the probability of the existence of a conspiracy, is destroyed, annihilated, and done away; that, when the foundation is gone, the superstructure must fall; and all that my learned friend the attorney-general has built upon it, all that he wishes you to infer from the evidence he has given, every circumstance which he wishes you to note as inferring the guilt of the unfortunate person at the bar, turns directly the other way.

When I shall have done this, I must then call upon you to apply the doctrine of lord Coke, and lord Bacon.—Then you must consider if you have manifest proof—then you must see that the lantern of justice (the evidence) is carried clearly before your eyes.

I know that in you I am addressing myself to twelve men of feeling, of integrity, of intelligence, of discernment, men possessing every quality that can belong to the sacred and important function in which you are engaged; I am confident, therefore, that if I establish in proof what I here state myself to be able to prove, I shall efface from your minds all idea of the existence of this conspiracy, and consequently of every thing that is founded and built upon it. But this is not all, this relates only to the improbability of such a conspiracy having been contrived by these unacquainted, jarring, hostile, conspirators.

I now request your attention to the probability of such a contrivance coming from Upton. What was his situation?

His conduct was the subject of inquiry in the society to which they all belonged, and the persons indicted were promoting the inquiry: his enmity will be proved by communication with the persons indicted, of the most hostile nature. The whole tenor of his life will hold forth a man, from whom, if he had appeared in that witness-box, you would have shrunk back with horror. These, then, are the considerations. What was the situation of this man?—What was the peculiar time in which he spoke? What is the peculiar art (as the history of all ages proves) of men of that description in such times and in such situations? The man, such as I have described him, had no means of rescuing himself from the obloquy of his associates, but by the fabrication of a plot. He determined, therefore, to turn the mechanical instrument, the air gun, to the wicked purpose of crimination. Who can tell for what purpose he might have ordered the air gun to be made? he was capable of preparing it for one vile purpose, and had address and art enough to turn it to any other purpose that might suit his interest, or gratify his revenge. Such, then, is the position in which Upton stands; and upon this ground I contend, first, that there is an absolute improbability of the conspiracy existing at all, arising out of the relative state of the parties; and next, that there is the strongest probability that Upton contrived it for his own purposes.

Gentlemen, what was the state of the times when these things passed? Is it possible to forget the alarm which spread throughout the nation at that period; an alarm, which seemed at once to take possession of all ranks and descriptions of men? It was in the midst of that alarm that this plot was contrived; nay, it was contrived at a particular period of it. You will recollect that there was a time when convictions had taken place in Scotland of persons tried for high treason. The men in Scotland were tried upon the ground that there had been a conspiracy against the government of the country, to destroy the constitution, and by legal inference, therefore, aiming at the life of the sovereign; these persons were convicted. In this country persons were tried for the same crime, and those persons were acquitted.† Gentlemen, I bring nothing into a court of justice but the duties of an advocate; I make no observations here of a political tendency upon the convictions in one

* See the trial of Robert Watt, *ant*2, Vol. 23, p. 1167, and the trial of David Downie, *ant*2, Vol. 24, p. 1.

† See the trial of Thomas Hardy, *ant*2, Vol. 24, p. 199, and the trial of John Horne Tooke, Vol. 25, p. 1.

country, nor upon the acquittals in the other;—but I state the fact for this material purpose,—that in the intervening time, when the alarm had taken possession of men's minds, when it had been raised to its utmost height by the convictions in Scotland, after the trials in England were ordered, but before the acquittals took place, which tended to relieve men's minds as to the reality of the alarm; just in that intermediate time this plot was brought forward by Upton.

Such being the peculiar time at which this discovery was made—mark the coincidence of circumstances,—that period which will be proved to you to have been the time of discovery and accusation, will be proved to you to have been immediately posterior to the quarrel and the challenge to fight between Upton and Le Maitre; when Upton was roused, not only out of regard to his personal defence and safety, but from every other motive, to make the accusation. Here then are three things which coincide in establishing the strong probability that Upton invented this plot for his own purposes—security as to his personal safety, the gratification of his revenge, while the state of the times sanctioned the invention, and secured to him a reward. I desire you therefore to examine all these different motives, carry them in your minds, consider their nature, and you will find, that although they are different, they are concurring, and are motives which can consistently exist, and be in action at the same time.—There is nothing inconsistent in a person being urged at once by a love of personal safety, by a spirit of revenge, and by the hope of reward, to bring to punishment persons whom he knew to be perfectly and completely innocent. And mark how well the public mind and the tone of society was calculated to encourage a miscreant to bring forward such a contrivance.

The history of the world proves such to be the time and season for such informers to bring their inventions into action. The history of our own country affords the most perfect illustration of the period of alarm being the season in which they may ensure success.

Recollect the description given by that profound historian David Hume, of the state of the public mind in this country at the time of the popish plot. "The people," he says, "thought their enemies were in their bosom, and had actually got possession of their country. Each breath and rumour made them start with anxiety. Like men affrighted and in the dark, they took every figure for a spectre. The terror of every man became a source of terror to another, and an universal panic being diffused, reason and common sense, and common humanity, lost all influence over them."

In such a situation of the public mind, the false informer considers himself sure of convicting; and such was the consequence in

that period to which the historian refers; when common sense and common humanity had lost all influence even over the juries of the country. But the informer of the present age will not be so successful. Thank God! the judicial improvements of this country since that period, the integrity of the judges, the enlightened minds of juries, the conscientious determination to distinguish between guilt and innocence, the openness to receive information, the abandoning all ideas of judging upon any facts or impressions except those arising out of the evidence in the cause, the disregard of all prejudices even the most forcible upon the human mind, happily form the judicial character of the present times, and secure the accused from unjust convictions.

I have now, Gentlemen of the Jury, gone through, I believe, the circumstances of the original history of this case, the situation and character of Upton, the probability of there being no such plot, because the conspirators were little acquainted with each other, and were at enmity with each other; the improbability of such a plot, upon that account, and the probability of there being such a contrivance as that with which I charge Upton to be the contriver. It is now my duty to call your attention to the evidence, in the different points of view in which it appears to me to be important. I hope to execute this without being tedious; at the same time, as this is the most material part of the case, and as we are all engaged in the discharge of a most solemn duty here, I do most anxiously intreat your patience; and I am sure, my lord, and I am sure you, gentlemen, will pardon me, if I should rather be prolix than run the risk of leaving any thing unsaid that may be for the benefit of the prisoner.

The witnesses upon this occasion are of two sorts; one set of witnesses was brought to prove that an instrument, such as is described in the indictment, was prepared; another set of witnesses to prove that that instrument was meant to be used for the particular purpose laid in the indictment. You will observe, that these two classes of witnesses speak to facts of a very different sort. The one, those who prove the instrument, speak to facts which passed before their eyes; but with regard to any use of the instrument, with regard to any colour given as to the criminal purpose for which that instrument was prepared, or any intended application of it, they state no fact whatever: the other class of witnesses speak only to declarations. You will observe, therefore, upon this case, that the evidence of fact only establishes the making of a particular instrument (an air-gun): how far these facts bring it home to the prisoner, is a question for me to discuss, and for you to try, while the evidence of confession, or the evidence of declaration is that which tends to establish the use of it.

Instead of examining the evidence in the order in which it was called, I will take the liberty of classing the witnesses according to the different nature of their testimony, for the purpose of applying their evidence particularly to these two distinct subjects of proof; because different observations, different rules of probability, and different principles, apply to the one class of witnesses from those which apply to the other. The first witness called is a person of the name of Dowding; that person, you will recollect, did not speak of any machine or mechanical instrument being prepared, and he did not speak at all to the prisoner at the bar. He only said that three persons came, and that Upton was the principal spokesman, and he particularly said, when it was mentioned that it was a secret, that Upton was the person who said it was a secret; but you observe, that this person likewise stated a very material fact, namely, that they haggled about the price, and thought it too dear. Now I wish to call your attention coolly and deliberately to that fact: mark what the nature of the charge is,—a terrible charge, if it be a true one, but one which must be bottomed in a design which has some view and object, and has for its foundation something more than the meeting of four obscure individuals, for the purpose of contriving this extraordinary plot; yet no evidence whatever is given to you, that the other persons named in this indictment, or that any body else was at this time concerned in it but the prisoner (if the prisoner was concerned in it) and Upton.—What does Dowding say? he says, they haggled about the price; need I ask you, as men capable of weighing the import of human actions and of human conduct, whether it is a natural thing, that persons carrying on such a plot as this,—a plot founded, necessarily, in an extensive plan of revolution,—a plot accompanied with such circumstances,—could be influenced by the price of a small metal tube? or that a few shillings one way, or a few shillings the other, could be at all an object? That fact, in my opinion, tends to establish a strong negative to the possibility of there being any such thing existing in the minds of these people, as that which is attempted to be inferred; but you observe that Dowding proves nothing actually done, and here is an end of my observation on Dowding's evidence.

The next person produced is Bland; by his evidence you observe that nothing is proved to be done; only two were present at that conversation; Palmer remained behind, and Palmer accounted to you in his evidence why he remained a short time behind, the two others were there for the very short time while Palmer remained behind, in the house with Bland. Palmer came and inquired after them; they were gone, but Bland could not tell where. Palmer went into the street and saw them, and seeing them he overtook them, consequently the conversation could not have

lasted above a very few minutes, but Palmer was not present.

Now Palmer is supposed to have been a person concerned in this plot. Palmer, as well as Upton, is supposed to have been acquainted with the particular object and design that the prisoner is charged with. Is it not then a very extraordinary thing, and contrary to all probability, that, in a scheme of this kind,—a conspiracy to take away the life of the king, which must be combined with an intention to overturn the state,—that the conspirators in that very scheme, that Mr. Palmer, a person ushered in by the attorney-general in his opening speech, and examined by Mr. Garrow, as if he had been a witness of mine, and under cross-examination, and not a witness examined in chief for the crown;—that of these conspirators, Palmer, who staid behind for the reason given in his evidence (a call of nature to stop), should not know to what place they were bent next, and that when he did not find them in the house, it was only by seeing them in the street, and overtaking them, that he found his way to the place whither they were next going.

I should wish you next to attend to the evidence of Cuthbert. He is a person who makes instruments; he spoke concerning an air pump; Cuthbert has nothing to do with the making of this instrument, nor with this supposed conspiracy; he does not give any proof whatever of the fact of fabricating the machine—none whatever. But he states to you, that he had occasion to go to Upton for a particular purpose; namely, to pay him money, which was to be paid over to the wives and children of the persons who were confined in Newgate, for the treasons that were formerly tried; that observing Upton to be a watch-maker, he invited Upton to come to his house to see some of his machinery; that he soon discovered Upton to be a disagreeable person; that when Upton called the second time he took little notice of him; that he remained upon his seat all the time; but he establishes this important fact, that Upton and the person who came with him appear to have been most completely ignorant of every thing with regard to the power of air; and he proves, at the same time, that they did not come there with the intent of learning what the power of air was. He negatives that intent expressly, by establishing that Upton came at the particular invitation of the witness Cuthbert.

I say, then, there are conspirators contriving a machine of destruction, who were ignorant of the very principles of the machine which they were to use; conspirators going to the shop of a mechanic, not with a view to learn the principle upon which this machine was to be constructed, but going upon the particular invitation of the person as a matter of curiosity. There is another observation which I am sure you will make, when you come to consider whether this case is proved

probably or not, namely, that while Cuthbert's testimony is produced merely for the purpose of giving colour to their speculation, it proves their ignorance of first principles. He does not prove that Crossfield was one of the two; and he does not speak to the particular question of the fabrication of the machine.

Gentlemen, as I am now upon the testimony of this witness, I will state one other circumstance. In answer to a question of my learned friend on the other side, he said, that when at the privy council, there was one Dennis there, and that he, Cuthbert, did not know the prisoner—he had not the least idea of him—he only knew that a person came to his shop with Upton, but could not tell whether the prisoner was that person; but he says, that Dennis was at the privy council, when a person, whom Dennis called Crossfield, walked through the same room, and Dennis said, with great anger, "There he goes!" The witness asked, "Who?" Dennis said, "Crossfield; damn him, I should know him if it were his ashes burnt."

I come now to the evidence of Joseph Flint; there again there was a short conversation, and nothing was proved to be done; and he speaks positively to the lame-man (Upton) being the spokesman, and does not identify the prisoner.

Gentlemen, the next witness to whom I shall call your attention is Mr. Palmer. My learned friend, the attorney general, in opening (and certainly the manner in which that witness was treated corresponded exactly with his opening) stated, that he might be under the necessity of calling some witnesses who stood in a particular situation and connexion, and therefore it might be difficult to obtain the truth from them. An observation was made in the examination of that witness, which I am sure must have made an impression on your minds, from the height from which it fell.* It was this, that the crown cannot discredit their own witness in any thing, without losing the benefit of that witness's testimony.

I am not responsible for Palmer's conduct or his character; he is the witness of the prosecution; but I will state what he proved, and such observations as occur to me upon what he proved.

You will observe, in the first place, that Palmer ascertained this fact without leaving any doubt upon the mind of any man who heard him, namely, that Mr. Crossfield's personal acquaintance with Upton was of very short duration; he could not even state it to extend to a month. This, you will recollect, is one of the facts which I called to my aid, in that part of the case on which I have already addressed you. I refer to the improbability of persons conspiring together for such a purpose as this, without mutual confidence; and

if any conspiracy requires mutual confidence, it is that sort of conspiracy which is now the subject of investigation.

Palmer establishes another thing very material as to this design, and establishes it without leaving a doubt; namely, that they dined that day in the neighbourhood of Temple-bar; that it was mere accident which led them to visit Upton; that he went there for the purpose of having a watch repaired; and that they walked with Upton into the city; that, in short, this, so far from appearing to be any thing like a designed, was a mere accidental meeting. He then states to you, the various circumstances with respect to their going from place to place; but he can give no particular account of what passed on that occasion; and, as far as he goes, there certainly is not any colour to say, that the instrument, said to be in preparation, was either ordered by the prisoner, or that he had any hand in the ordering of it, or that he stood in any other relation than that of an accidental companion of Upton in those walks and interviews. Where then is the ground for the inference of a guilty design? With regard to the particular use and supposed purposes of the instrument, he says nothing that could lead to a conclusion, that it was made with the view and the intention laid in the indictment.

Mr. Palmer likewise proved to you the bad state of Mr. Crossfield's health, the ruined state of Mr. Crossfield's circumstances, the situation in which Mr. Crossfield was before this conspiracy is supposed to have taken place, or at least before the discovery, and that in which he continued to the time of his leaving England.

With regard to those last-mentioned particulars of Palmer's evidence, I shall pass them over at present, because they apply more properly to another part of the case, which is most material for your consideration; namely, the demeanour of the prisoner at the bar throughout the whole of this transaction.

Gentlemen, before I go on, permit me to call your attention particularly to dates; I wish you to remember, that Mr. Ward said, that he first went to Mr. Pitt upon Saturday the 18th of September, that he saw him on Wednesday the 16th. It will be proved, that Le Maitre and Higgins were apprehended the 27th of September, that Smith was apprehended on the 28th; and it will be proved, that the advertisement offering a reward for seizing Mr. Crossfield, was not till late in the following February. I desire you at present to attend to those dates, because, in the sequel of what I have to address to you, I shall be under the necessity of making observations of some considerable importance with regard to them.

I now come to the evidence of Thomas Hill: you will recollect he was the person employed to make the model in wood; you will ob-

* See what was said by lord chief justice Eyre, *ante*, p. 37.

serve that, throughout the whole of Hill's evidence, Upton is the person who gives the orders respecting the instrument; that Upton is the person who said he should be paid; that Upton is the House to which he carried it; that Upton is the person to whom he applied for payment; and you will recollect, likewise, that he had no knowledge whatever of the prisoner; that the prisoner did not interfere in the business at all, except with respect to some directions in aiding Upton when he was giving the description, but he did not seem to take any particular part in it. You will observe likewise (for I am sure I state the evidence fairly and correctly), that all he said upon that occasion was, that the stranger might do something, but he spoke from a faint recollection.

If this has proved any thing, he has only proved the existence of a model, he has not proved the use of it; so little has he proved the use of it, that a scientific man, Mr. Mortimer, who wished to give us, last night, an ostentatious sample of his scientific knowledge, unnecessary for the occasion, told you expressly, that if he had been asked, without describing them, what use these models were meant for, it would have been impossible for him to have ascertained or even conceived their use or application.

Lord Chief Justice *Eyre*.—You misapprehend the evidence there, and making observations on the evidence not founded in fact is injurious to your cause.

Mr. *Adam*.—I do not mean to misapprehend the evidence.

Lord Chief Justice *Eyre*.—He did not say, that he could not have known the use of the models; but said, he could not have known that these models were prepared from those drawings.

Mr. *Adam*.—I am excessively obliged to your lordship most undoubtedly. I asked him, upon cross-examination, showing him the roller, if he could have known, from looking at that roller, for what purpose it was intended; I think his answer was, he could not.

Lord Chief Justice *Eyre*.—You misapprehend him; he said, he believed it was for a piston of an air gun, that taken together with finding the tube, it was satisfactory to him that it was so, but without finding the tube it was not so satisfactory, but that that was his opinion; what he said with regard to not knowing it was, the drawing was so bad, he should not have known that the model was prepared from the drawing, unless he had been told that they had had conversation upon the subject.

Mr. *Adam*.—You have heard from my lord the evidence to which I was alluding with respect to Mr. Mortimer, and the observation I have to make upon it as applicable to the evidence of Hill is this—that Hill undoubtedly, from Mr. Mortimer's evidence, could not conclude any thing as to the use of the

instrument, Hill being an ignorant man. Consequently all that appears from Hill's evidence is, that something was made, and you will recollect, because it is important in the sequel of what I have to address to you, that Hill, as far as I am able to trace the evidence, is the only person who speaks to the actual fabrication, or who ascertains the actual making of any part of the instrument laid in the indictment; I mean with this distinction, the distinction of general confessions, upon which I shall observe hereafter.

The next witness, though not the next in order, to whose evidence I shall call your attention, is Mrs. Upton, and upon the present occasion I wish merely to state this: Mrs. Upton was called principally to prove her husband's death; but she was examined to some other circumstances, particularly to some of the instruments produced having been in the house of Upton; and you will recollect that she could swear to none of them but the models; that she could not swear to the drawings, nor to the tube; consequently, she carries the formation of the instrument no farther than Hill did.

With respect to what she said regarding her husband, that I shall have occasion to observe upon when I come to state the evidence on the part of the prisoner, which I shall be under the necessity of laying before you. I shall, therefore reserve that part of her testimony to that part of the case.

Gentlemen, I beg leave now shortly to refer to the evidence of Steers and Pusey, who were called to show that Upton, at a meeting of the Corresponding Society, had in his possession something resembling the tube; for that was all that the evidence amounted to. Now, whether it was or was not the tube, upon the view which I take of the case, is a matter of no consequence. I bottom myself throughout in the malignity and wickedness of Upton's character; and on his character, combined with facts and circumstances, I assert, that he might have contrived such an instrument for an innocent, an indifferent, or wicked purpose, without any connexion with others, and might afterwards raise a story converting it to the injury of others, for the gratification of his own revenge. As long as I found my case upon that principle, I contend that it is a matter indifferent to me, so standing here for the prisoner, whether this story of the tube having been in Upton's pocket was proved positively, or left in a state of ambiguity and doubt. It does not come home to the prisoner, he was not at the Corresponding Society upon the occasion. It does not come home to any one of the individuals charged in this indictment, for not one of them is stated to have been present upon that occasion. In short it is a story which relates distinctly and singly to Upton, which belongs to his wickedness and malignity, which is founded in the advantage he thought to take of those he conceived to be

his enemies. The tube was cunningly and secretly shown by him to raise suspicion; not openly produced, but peeping from under his coat; the very mode which a false accuser would adopt. Therefore, I contend, that every thing which is to be drawn from the doubtful evidence of these persons, with regard to the existence of this particular part of the air gun, and what it was (for my lord examined them particularly to what it was, and they said, they rather believed it to be a tube, but could not speak certainly to it) is evidence that can have no weight in this case, as far as it regards the prisoner at the bar; what it proves, if it proves any thing, is, that Upton was actuated by some black and vindictive purpose.

I come now to the evidence of Mr. Ward, which merely proved, that he received information of this supposed conspiracy from Upton; that he communicated that information to his majesty's ministers, and that in consequence of it, the several persons were committed at some subsequent time.—You will always observe, however, something singular in this case; that the information was given on the 12th of September; that it was not communicated, as appears, till the 16th: but that none of the parties were seized till the 27th, and that there was no reward offered for apprehending the prisoner till the end of February;—and I contend that the last is a most important fact in this case, because, it shows that, whatever the diabolical intention of Upton might have been; that whatever the circumstances of the case might have been at that time; at least that they had not an idea that there was then evidence laid before them to justify the seizing the prisoner. Therefore, when I shall come to examine his demeanour, after the apprehension of the three other prisoners, you will always bear this in your mind, that no ground for suspicion of Mr. Crossfield can be proved to have existed, until such time as his majesty's ministers offered a reward to take him, otherwise they must be supposed negligent of their duty.

Gentlemen, on the review of all this evidence, I wish to draw your attention to what is proved with regard to what may be called the instrumentary part of the testimony, that is to say, the fabrication of the instrument; and, I think, you must necessarily agree with me, that with respect to the fabrication there is but one witness who speaks positively to it, and that one witness speaks only to a small part of it, the tube. He does not speak at all to the use, or to the purpose of it, nor do any other of the instrumentary witnesses. The single witness who speaks to it, I say, is Hill; and with regard to the fabrication of the other part, I mean the arrow, which forms a most essential ingredient in this case, because, without it, the means were not complete to the end, he says nothing; I say, therefore, that the use to which the instrument

was to be applied, rests entirely upon that part of the evidence to which I am now about to come, namely, the confessional evidence,—the prisoner's declaration.

Upon this part of the case, I conjure your attention. I shall endeavour to impress it strongly on your minds, because I am strongly impressed with it myself. The nature of confessional evidence, or evidence of declaration such as this, is to be well weighed in a question of any sort. In a question of this particular nature, where the overt act of fabrication rests on the testimony of one witness only, I shall contend, and I think successfully, that it is not at all to be credited; and that it is impossible for grave, serious, intelligent men, like you, laying your hands upon your hearts, in solemn judgment upon the life of that unfortunate person, to say, that there is that clear, distinct, manifest evidence, which, according to my lord Coke and my lord Bacon, amounts to proving an overt act of treason *provably*; for you are not, as lord Coke tells you, to deal in probabilities, you are not to deal in conjecture but you are to say to yourselves, in the solemn moment of deliberation, do or do not these facts, prove provably, manifestly, and incontestibly, the guilt of the prisoner at the bar.

Upon the confessional evidence you will observe, that there were four witnesses, Le Bretton, Dennis, Winter, and Peanny, to prove the declarations of the prisoner.—Permit me, again and again, to observe, that this evidence of declaration, is very doubtful in its nature. I am sure I do not advance any thing in which I shall be contradicted by any authority in this court, when I say, that it is to be taken with great consideration on all occasions, as a proof of fact or intention.

Gentlemen, I have already called your attention to the important and significant words in the statute of Edward the third. I have read to you the commentary of sir Edward Coke, of almost equal authority with the text. You find with what anxious solicitude he distinguishes between the words probably and provably. Unless we accuse that great lawyer of vague, unmeaning expressions, we must affix a precise sense to the word on which he dwells with so much force; he must mean the highest evidence of which the nature of the thing is capable; he must mean what may be termed legal demonstration, such demonstration as parol testimony affords. Now I wish to present correctly to your minds the nature of such demonstration; it amounts to this, that if the witness speaks truth, the fact to which he speaks must be true. For example, in a case of high treason, if it be proved by an eye witness, that a certain person has been out in arms, in rebellion against the sovereign, that fact is proved provably; it is proved to the full extent of legal demonstration; because if the witness speaks truth, the fact must be true. But when evidence is given of confession, observe

what the nature of it is: the person who gives the testimony may speak truth, and yet the fact may not be true; because the fact does not depend merely upon the statement of the witness, it depends upon the statement of another person, who has stated the thing to the witness. This doctrine, which cannot be questioned, makes it fit to receive with great deliberation, and even with considerable hesitation and doubt, all evidence of confession.

But, gentlemen, this goes much farther; and the rules which govern it are not founded on any abstract principle of law, not in any difficult conception, or abstruse train of reasoning, but in plain common sense.

Confessional evidence is such, that not only the person who makes the confession must be clear from all motives either of hope or fear, but his mind must be so fashioned and prepared, that you shall believe what he confesses to be correctly and accurately true. The person making the declaration must not be led by hope, on the one hand, or fear on the other, to state circumstances that may make in his favour; and the mind which is to receive the confession, the person to whom it is made, must have an accurate, distinct understanding, capable of carrying it away with precision, of reporting faithfully, without exaggeration or misrepresentation. You will observe, too, in all evidence of confession, the nature of it is such, that it is next to impossible to convict for perjury on account of such testimony. What is the security offered by the law, that witnesses shall speak truth in a court of justice? It is this, that they come here under the terror of a penal prosecution if they do not speak the truth. A witness who comes to speak to a confession, comes to give evidence to that which, from the very nature of it, cannot be negatived, because it is impossible to swear that a person did not say such or such a thing; all that can be said by a witness is negatively, that he did not hear him say it: consequently the person who speaks to the declaration, gives his testimony without those risks of penal proceeding; he is safe from the restraints and terrors of the law.

Now if you apply this general reasoning to the present case, observe how strongly it bears upon it. Consider what the nature of the question is which you have to try. It is, whether the prisoner proposed to prepare the instrument for the purpose set forth in the indictment. In other words whether the preparation of that instrument—an act innocent in itself, and which may as well be connected with objects of philosophical experiment, as with a criminal use,—was undertaken for a particular criminal purpose, which purpose is proved merely from the declarations of the prisoner, for there is no other evidence tending to impute the guilty motives which actuated the supposed conspirators. Such declarations are, as I have already stated,

evidence as to which it is next to impossible to convict a false witness of perjury. In addition to this, it is to be observed, that the intention of the mind in this case is not like the ordinary cases of treason, in which the fact (like an act of rebellion), if proved, contains evidence of the traitorous mind. In such a case it is only necessary to prove the fact, and the intention is proved with it; but in this case you have received proof of the fact of making the air gun, and the intention still remains unproved—the proving a plan to prepare an instrument does not prove a traitorous purpose as to its use—that must be proved by those who are supposed to know the purpose. Now the proof of the purpose rests in the mind, and in the character of truth belonging to the mind of the witness brought to prove the purpose, which cannot be examined by any external criterion that will try its truth or falsehood. Here again, therefore, the witness is secure against a conviction for perjury. So that in this case the security against false testimony is removed in a double view; first, as to the proof of intent; secondly, as to the testimony of declaration or confession;—and both unite in the case of that unfortunate gentleman.

But there is still another observation material for your consideration. We know how very liable mankind is to exaggerate a story; we know how rare it is for a story to be twice told exactly in the same words. Now confession or declaration is a mere story told. If the confession relates to a particular distinct substantive fact, perhaps the witness may be able to bear it in his memory, if his nature does not incline him to falsify it; yet if he does falsify, it is not only difficult but impossible to contradict him by contrary testimony; but if the confession relates to something longer and more intricate than a particular fact, it is sure never to be repeated twice without some variation. Every day's experience, and every common report, demonstrates the truth of this.

There is a great difference in confession, according to the subject matter to which it is applied. If confession is applied to common and ordinary occurrences, in which there is no motive for falsifying—or in which the propensity to exaggeration (that natural bias of the human mind) is not necessarily excited, an attentive listener may be a correct reporter. But consider how different this case is: here is a confession relating to high treason; a subject which lays strong hold of the human mind; here is a narrative relating to the greatest, the highest personage in the realm, upon whose existence the safety of the society in which we live depends, who has displayed every virtue during a long reign, and whose life could not be violently and suddenly taken away by traitors without exposing the state to the most dreadful and calamitous consequences. What subject so likely to lay hold of

the imagination, and to lead to the excess of those failings which are incident, perhaps in such a case honourable, to our nature?

Consider, too, that the prisoner at that time (for I shall have occasion to speak hereafter of his demeanor) was in a situation where he might be flattered with a hope that particular representations might be favourable to him, and that he might thereby alleviate that captivity into which he had fallen.

Gentlemen, I feel all this so deeply impressed upon my own mind, I feel it so much a part of my duty to be well founded in these topics, that I am anxious to carry you beyond the authority of the counsel for the prisoner. I am desirous to follow the example of my learned friend, the attorney-general, and to shew you from grave, legal authority—not the speech of an advocate, but the deliberate opinions of judges, of the wisest and best lawyers who ever dispensed justice in this country—that my principles are correct.

The first authority to which I shall refer you is Mr. Justice Blackstone, who in his fourth volume, in which he treats of crimes, says, with regard to confession—“But hasty unguarded confessions, made to persons having no authority, ought not to be admitted as evidence under this statute:” he is there talking of the act of Edward the 3rd. Observe, gentlemen, I do not now apply it as it regards the question of admissibility or inadmissibility. The evidence is legally admitted under the authority of the judge who presides here. But I apply it as it regards the credit attached to the evidence, and not to its admissibility.

Mr. Justice Blackstone, on the same topic, goes on to say—“But hasty unguarded confessions made to persons having no authority ought not to be admitted as evidence under this statute; and, indeed, even in cases of felony, at the common law, they are the weakest and most suspicious of all testimony;—ever liable to be obtained by artifice, false hopes, and promises of favour, or menaces—seldom remembered accurately or reported with due precision, and incapable in their nature of being disproved by other negative evidence.”

Gentlemen, I again state that I do not now contend about the admissibility of the evidence; I am only showing you how lawyers of great eminence have laid down the doctrine with regard to its being admissible or inadmissible, in order to persuade you that in this case no credit is due to the testimony laid before you.

I come now to the author relied upon by the attorney-general—Mr. Justice Foster.

He says “Words are transient and fleeting as the wind; they are frequently the effect of sudden transport, easily misunderstood and often misreported.” He, upon this occasion, is not talking of words with a view to their being treasonable or not treasonable, but when he uses the marked expressions to

which I have referred, he is speaking of prosecutions for seditious words. Now, if words in one view are of that nature, all confessional evidence, all evidence of declaration is exactly of the same nature; because all declarations consist of words. But upon the present occasion, the declaration extends to a considerable length, their weight depends upon the precision and accuracy with which the words are reported; and I contend, therefore, that the doctrine applicable to words, as laid down here, “to be easily misunderstood and often misreported,” is applicable to declarations and confessions of every sort.

In another part of his most excellent book, he lays down the principle correctly and accurately. In the case of Willis,^{*} tried for high treason, it occurred to consider whether a confession is evidence proper to be left to a jury or not, under particular circumstances which I may have occasion to state. Mr. Justice Foster, after discussing that case, which it is unnecessary for me to trouble you with at present, says—“The reader sees that opinions have been various touching the sufficiency of this sort of evidence” (that is the admissibility of confessions); “but perhaps it may be now too late to controvert the authority of the opinion in 1716, warranted as it hath been by the late precedents; all I insist on is, that the rule should never be carried further than that case warranteth—never farther than to a confession made during the solemnity of an examination before a magistrate, or a person having authority to take it, when the party may be presumed to be properly upon his guard, and apprized of the danger in which he standeth, which was an ingredient in the case of Francia[†] and of Gregg, cited in the argument in Francia’s case.” He then goes on to give the reason, and he gives it in his simple and eloquent manner—“For hasty confessions made to persons having no authority to examine, are the weakest and most suspicious of all evidence; proof may be too easily procured.”—I beg, gentlemen, you will mark the words:—“Words are often misreported; whether through ignorance, inattention, or malice, it mattereth not to the defendant—he is equally affected in either case; and they are extremely liable to misconstruction; and withal this evidence is not, in the ordinary course of things, to be disproved by that sort of negative evidence by which the proof of plain facts may be, and often is confronted.”

Such, gentlemen, is the opinion of the author upon whom Mr. Attorney-General relies, expressed in the most solemn and emphatic language, and enforcing the doctrine which I have been laying down.

You see, from Mr. Justice Foster, that

* See Vol. 15, pp. 623 *et seq.*

† See it, *antè*, Vol. 15, p. 308; see also the case of Berwick, Vol. 18, p. 367.

there was a time when there was a question with regard to the admissibility of that testimony. Wherever there is a question as to the admissibility or inadmissibility, the competency or incompetency, of evidence, it necessarily involves the question of credit. If the question of admissibility is got over, then the evidence goes to the jury, but it goes to the jury clogged with every argument against its credit that could have been applied to the admissibility of the testimony—it goes to the jury liable to every observation that could have been made to the judge in order to prevent him from receiving it. I am sure, therefore, that I am in my proper place, when, upon the effect of this confessional testimony, I am addressing you upon general principles, derived from the works of learned and sound lawyers; deliberated upon and set down in their writings in the most grave and the most serious moments, and in the contemplation of cases precisely similar to the present. Therefore, in the language of my lord chief justice Hale (who lays down the same doctrine with Foster, but whose words I do not trouble you with citing at length) talking of the blessings of our constitutional mode of trial, particularly applying it to treason, “Juries are not only triers of the cause, but they are triers of the credit of the witnesses; nay they are not only triers of the credit of the witnesses, but they are triers of the credit of the facts.”

Thus I come round again to the principle from which I took my departure, namely, that as matter of legal demonstration, the intention is not *provably* proved, because legal demonstration is that by which, if the witness speaks truth, the facts must be true; but in the case of confessional evidence, the witness may speak truth, and yet the fact may be utterly false.

The effect of evidence of declarations depends on two things—upon the mind which conveys; and upon the mind which receives; and then it is to be weighed with a consideration of those other circumstances, which I have taken the liberty of stating and enforcing, namely, that it is unrepellable by negative evidence, that it is next to impossible to convict for perjury on such testimony.—You must well examine the character of the mind of the persons who prove the confessions. For in this case, gentlemen, you have an example calculated to illustrate the doctrine, and to warn you of the fallibility of this sort of evidence. You will not forget the old man, Winter, who came here to give testimony to these most grave and serious declarations, in which soundness of judgment, as well as accuracy of memory, constitutes a most important and principal quality, of which indeed it is the essence, who told you as matter of his firm belief the incredible story of the hare having lived amidst the dogs, without being touched by them. I ask you, gentlemen, if that man ought to be believed as to the con-

versation of the prisoner? I ask you, if he has a mind fit to be trusted in a matter so solemn in its effects, so delicate and so nice as matter of evidence?

I must anxiously press upon your minds the doubtful nature of such testimony, because I am perfectly confident that honest, just, and humane men, like you, will not touch a hair of that man's head, if you are convinced that the case is only probably proved; that you will require to be convinced that it is *provably* proved; that is to say, that the facts upon which the intention depends must be such facts as cannot but be certainly true.

Gentlemen, Mr. Justice Foster says, in the book which I have already quoted, “evidence of confession is corroborative evidence.” What does he mean by that expression?—He means that it is auxiliary evidence. Auxiliary evidence for what? to assist the overt acts previously established. Does he not, then, when in 1746 he uses that word corroborative as applicable to confessions—“that they can only corroborate or assist facts otherwise proved,”—mean to convey what lord Coke did, when he said, a century and a half before that period, that treason must be proved *provably*? Mr. Justice Blackstone confirms the doctrine; and it has lately been acknowledged by very high authority in the place where I am now speaking.* I have, then, the whole history of the law in my favour: I have the words of the statute in my favour, and the exposition of the statute as delivered by lord Coke: I have the doctrine of criminal jurisprudence, as carried into a court of justice by the enlightened and great mind of lord Bacon, acting as prosecutor for the Crown: I have the solemn opinion of Mr. Justice Foster: I have it laid down by Mr. Justice Blackstone, with whose eminence you are all acquainted, and whose works are so popular that you, no doubt, have read them: I have all these different testimonies, confirming the doctrine which I have advanced; and I am sure when you come to examine this confessional evidence here, you will with mercy and discernment consider again and again whether it is possible upon such testimony to convict the prisoner, under such circumstances, of an intention so proved; when he stood in such a situation of inducement to speak rashly, and when the witnesses were so little likely to retain correctly what he may have spoken. I am sure you will hesitate much before you permit yourselves to believe such testimony.

Subject to these general observations, permit me to state to you what the evidence is which has been actually given. I have mentioned the four witnesses, Dennis, Winter, Penny, and Le Bretton. I have collected the different modes in which they swear, with re-

* At the Old Bailey, 1786. Vide Leach's Hawkins's Pl. Cr. Vol 2, p. 604. note: ed. of 1787.

gard to this particular point. As to the other points of their evidence, that is a different and future consideration. Le Bretton says, he heard the prisoner say, "he was one of those who invented the gun to shoot at his majesty." Dennis states that the prisoner said, "the king was to be assassinated by a dart blown through a tube, and he knew how it was constructed." Winter swears he said, "that he shot at his majesty, and damned unluckily missed him." Penny says, "that he was one of the ring-leaders of the three that attempted to blow a dart at his majesty in Covent Garden." Mark the discrepancies in these accounts, and next observe what the fact is upon which the indictment rests, and upon which the prosecutors depend for your verdict of guilty. According to their case a conspiracy existed in September 1794, which was discovered by Upton; in consequence of Upton's discovery, three of the conspirators were arrested; Upton was not imprisoned himself, because he was the spy and discoverer; Crossfield was never mentioned nor advertised till the month of February after; in the mean time this plot, if it ever had any existence at all, was totally at an end. The positive direct evidence upon which my friend must rest his right to call upon you for a verdict against the prisoner, is this, that here was a plot in which this prisoner had a share; which plot was broken up and put an end to by the arrestment of three of the principal supposed conspirators in the month of September. In February Crossfield is taken into Brest in a prison ship; there, in a situation where such conversation might avail him with the French, or he might think so, with an impression on his mind of that sort, to these witnesses such as you have seen them he gives four contradictory accounts, or rather they give four varying testimonies. You will observe, some of them suppose that an attempt on the king's life had actually been made; some that it was only intended; and some suppose it in one way, others in another. Now the fact upon which the cause rests, according to the case of the Crown, is this, not that the attempt was actually made, but that it was proposed to be made, and disappointed; that the intent was never carried into execution, even to the length of fabricating the instrument. Does not this show you that the very testimony in this case is so frail and unsubstantial in its nature, that it is impossible it should make an impression upon honest, just, humane minds, or minds of intelligence and discernment? Is it not clear from this, that all the general doctrines which are written in the books, are most material in the consideration of this evidence, and that the testimony now before you, is, as it were, calculated to illustrate the wisdom of those eminent and profound lawyers, and to show the infinite risk of admitting such evidence?

Is a person like Winter, believing the most ridiculous and improbable stories, contending

even now before you on his solemn oath, earnestly for their truth, treated, as he himself admits, like a person that was scoffed and jested at by every one,—is a man like Dennis, who proved himself to have an enmity against the prisoner, by his declarations to Cuthbert at the privy council,—is a man like Le Bretton, who I will prove to you, attempted to persuade captain Clarke to support him in his suspicious testimony, but from Clarke's honesty failed in accomplishing his object,—are witnesses like these to convince you of the deep guilt charged to the prisoner at the bar? Are they to be held as having proved that an instrument, the preparation of a small part of which is established by one witness only (Hill), and the existence of which never was proved at all;—which received no criminal complexion in this cause, but from these witnesses of confessions;—which received no particular application from any of the witnesses to the preparation;—was meant for the black and shocking purpose imputed by the indictment? The confessions of the prisoner are contradictory in themselves; directly adverse to the case upon which the attorney-general must rest his cause. Can you by possibility believe such confessions? But the case does not rest even here; you have had the evidence of Penny, of Winter, of Le Bretton, and of Dennis, with regard to the situation of the prison ships, and about the different persons who were in captivity; who, if these things were spoken, must have heard them, because they were the messmates and intimates of the prisoner. You will recollect above all, Le Bretton's testimony, with regard to captain Clarke; and you will recollect with what unwillingness, when I put some questions to him, he chose to admit that he had any intercourse with captain Clarke at Mrs. Smith's. You will recollect Le Bretton's testimony under these particular circumstances. Here then are four persons (whom I have already characterized, and I will not trouble you with characterizing again), who swear to these confessions, and these four witnesses state, that there might have been three times four witnesses present when the confessions were made, who all came to England in the cartel ship, who knew the prisoner, who lived in intimacy with him, who were likewise men of education, and who messed at the same table with him; all of whom might have been brought here in order to have proved this case.

Gentlemen, it was in the power of the Crown to have brought them; to what quarter of the world are they fled?—above all where is captain Clarke?—I cannot conceive why he is not here; he was examined to the fact. The counsel for the Crown knew his testimony. It was impossible for us to bring him here, the prisoner could not bear the expense of his detention. But I will prove most distinctly, that a conversation passed between Le Bretton and captain Clarke, wherein he

attempted to excite Clarke to give evidence against the prisoner, which Clarke refused as inconsistent with the truth. That is not all, but I stand in this fortunate predicament; I am capable by mere accident (for it was not in the power of this poor man to afford to keep the witnesses at a great expense; they might, but for accident, have sailed from this country),—I am able, I say, to produce two of the witnesses who messed, and constantly associated with the prisoner. Now, mark the situation in which I produce these witnesses, and the argument which is to be derived from this circumstance, with regard to this confessional testimony. In the first place I will prove to you, from these witnesses, that the prisoner expressed great cheerfulness at leaving France. In the next place, I will prove that he might have very easily remained in France, if he had chosen it. I shall tender these witnesses to the cross-examination of my learned friends; I know their powers and their abilities, I know the sense they have of their duty, and I am ready to risk the confirmation of their case by those witnesses.

I say, then, if witnesses of the highest respectability to be found in the place at the time, proved to have been in the society of Mr. Crossfield at the time spoken to by the persons who have been examined by the prosecutor, are brought before you, and swear that they heard no such declarations; does it not amount very nearly to a negative proof? were they not the best witnesses to have supported the prosecution? were they not the persons who would be most likely to have retained with fidelity the confessions, if there had been any? You will remember that two gentlemen of the name of Byron were mentioned, and others whose names I need not recite to you. All of them were brought over in the cartel ship. Where are those persons? Gentlemen, their absence is a strong circumstance in favour of the prisoner; especially when the positive testimony is at variance with itself, and each witness contradicts the other.

I find it necessary, from time to time, in order that I may omit no part of the serious duty which I have to discharge to my client, to summon my recollection that I may be sure that nothing has escaped me; and upon reflection it does not seem that in going over the evidence I have omitted any thing that might be important for me to observe upon, so far as I have gone. It is a great satisfaction to me, to think that my learned friend who sits by me [Mr. Gurney], who will make up for my deficiencies, is to have an opportunity of addressing you after our witnesses are called; and it is a still greater satisfaction for me to think, that the learned persons who preside upon this occasion, and whose opinions upon evidence are as enlightened and powerful as any that exist in these enlightened times, or in any times, will have an opportunity of discharging their duty

towards the prisoner, for your aid and for the furtherance of justice upon this occasion.

I now proceed to a topic which I have placed last, not from the dread of encountering it, for I am convinced that if there is any impression against the prisoner on the part of the subject to which I now refer, that I shall be able to relieve your minds from it; but I place it last, because it seems its proper order—I refer to the conduct and demeanour of the prisoner, from which my learned friend, the attorney-general, wishes to draw a proof of his guilt;—that is, he states his conduct to have been such, immediately after the discovery and the apprehension of the other prisoners, as to lead to the supposition that he from that time, down to the time when he was apprehended in Cornwall, was in such places, and acting in such a manner as to lead necessarily to a conclusion that he must be guilty.

In the first place, I am sure, that is a conclusion which you will not be rash in drawing upon such evidence as you have had, even if there was no answer to be given to that evidence. When a person is likely to be put in a situation of peril, although he may not be guilty, he may wish to keep out of that situation of peril. Such conduct is perfectly natural, and therefore it is too much to say, that a bad motive is always to be imputed, when, in point of fact, unless a bad motive is evident, the motive may be indifferent; and you ought to lean to the side of innocence, rather than to a conclusion of guilt.—But consider what the nature of this gentleman's demeanour was; he remained some days in London after he knew of the discovery of this supposed plot; he then went to Bristol. Now the proof that is before you of his having been at Bristol, is of this nature; he assumed no feigned name; he retired into no private place; he made no attempt to leave the country; yet Bristol is a sea-port town of the first resort, from which there is constant and facile communication to every part of the world; to neutral ports; to places where he might have ensured protection. Whereas, if you know the South sea fishery trade, in which he afterwards embarked, you must be aware that they touch at no place; and although they perform a long voyage, they return to this country without landing any where. He goes to Bristol, and never attempts to leave the kingdom; he never secretes himself; he goes into places of public resort, and does not change his name. Compare Bristol with London. I need not state to you (but it is incumbent upon me to make every observation, however common it may seem)—I need not state, that a man at Bristol would be more easily discovered than in London. It is comparatively a very small place. He afterwards returns to London, and you observe it is the month of January before he embarks. He goes on board at Portsmouth, the most frequented sea-port town in the kingdom, where there is

a constant and numerous concourse of his majesty's officers—persons naturally upon the watch—a town where there is, to the honour of the chief magistrate be it spoken, the best regulated police that exists in any town in the kingdom. Can you have an imagination that a person should land under his own name, and go publicly to shops to buy things, in Portsmouth, who is sought after to be seized by government; that he should not conceal himself at all; and yet that his demeanour should be held criminal? They sail from Portsmouth, and put into Falmouth; from Mr. Le Bretton you have it very unwillingly stated, that he went once a-shore there, but under no concealment. If captain Clarke had been here, I could most undoubtedly have established beyond contradiction, that he lived very much a-shore with him; but I have it not in my power to produce that witness; I may however be able, perhaps, to establish the fact by other testimony. Observe the situation of Falmouth; it is the most westerly port in this kingdom; the place whence all the public packets go; it is a small town with only one street; where no person can conceal himself; it is a place of constant intercourse with London; the resort of all the king's messengers—the very persons sent to apprehend those accused of treason; it is the place therefore where such a person was more likely to be taken than in any other place in the kingdom. You have it in evidence from the witnesses of the prosecutor, that he did go on shore once at Falmouth; I hope to give evidence of his going on shore more frequently; but I can say this, upon the evidence already given, that at this time he never changed his name, and yet remained there from the third to the thirteenth of February, and all this time it is supposed that there was an eagerness, an anxiety upon the part of government to seize his person.

The vessel sailed on the 13th of February and was captured on the 15th. I come now to a most important fact indeed. You have heard the evidence of confession, that is, declarations of the prisoner under the circumstances which I have stated. You have had evidence likewise from the same witnesses, stating that immediately upon the capture, he expressed great joy at the idea of getting to France. You have this as evidence of declaration.—mark what you have on the other hand. You have the evidence of the fact itself—of what fact? Of a fact that he risked his life in a double view, where he might have been killed in the attempt, or where he must have gone to inevitable execution if he had been discovered. What was the attempt? A plan, together with the English sailors, to seize the mariners and captain of the French ship which captured them, for the purpose of escaping—of escaping from whence? Of escaping from France; certainly not of going to France. I shall prove it more incontest-

tably, but it is already upon the evidence that the prisoner was one of those who joined in that design, a circumstance affording an unanswerable argument for my client, by establishing an act altogether inconsistent with the loose declarations which have been proved.

What is the supposed declaration? His eagerness to go to France. In what circumstances are the witnesses placed who prove that declaration? They cannot, from the nature of confessional evidence, as I have already shown you, be convicted of perjury. What was the doctrine of the great and enlightened mind of lord Mansfield? What was his uniform rule in ascertaining the truth of parol testimony, during the long period in which he presided with such eminence and effect, in the supreme criminal court of this country? What was it but this? Look to the facts and circumstances, consider what lawyers call the *evidentia rei*: observe the transactions as they passed; they never lie; consider if they confirm or rebut the testimony of the witness. No ingenuity, gentlemen, can twist or turn them; no cross-examination can shake them; no loose words can vary them; they carry conviction to the mind unanswerably. Then I have proved from the mouth of adverse and unwilling witnesses (from that unwilling witness Le Bretton, from that hostile witness Dennis, who could not restrain his enmity, but abused the prisoner as he passed through to the privy council room), the important fact that Crossfield joined in the scheme of the English sailors to seize, at the risk of his life, the French ship, with a view to release himself from French bondage. I am sure if he were the man they describe him, he could not have been impressed with feelings to dictate such an act. Would a man who is held up to you as guilty of every species of irregularity in point of conduct, and of immorality in point of opinions, who is represented as entertaining sentiments detrimental to the first principles of this constitution, who is supposed to have aimed at the life of his sovereign; can it be believed that such a person would have undertaken to be the first to enter the French cabin; to seize the captain, that he might avoid taking refuge in a country where he might have been secure, and return to another where he must answer for his crimes? No. What would the natural conduct of such a man have been? He would have agreed to the plan to seize the French ship, for the purpose of discovering it to the French captain. Does it appear from these witnesses, hostile as they are, that he ever proposed to discover it? No. He entered honestly into the design, to release himself from French captivity, to restore himself to English freedom.

Gentlemen, this fact destroys all suspicion of his guilt as to the crime imputed to him; shows him incapable of disclosing the design to the French, who in that case most undoubtedly would have given him a favourable

reception in France. He might then have been reported to the Convention, as a friend entitled to a reward for his services; he might then have commenced a communication with them to have forwarded their views on his return to England; facts asserted but not proved in any respect whatever.

Reflect, I beseech you, on the characters and prejudices of the witnesses who prove the matter which I have been discussing. Consider the importance of it in all its aspects, and then tell me, combining common observation on the nature of human conduct with those learned observations on declaratory, confessional evidence which I have drawn from the pure sources of Hale, Foster, and Blackstone, whether, you can find the prisoner guilty? Tell me, whether even, contemplating the levity of his character and his debaucheries in respect to wine, or opium, or women, as they have been proved (but I am not here, remember, to defend the moral conduct of the prisoner, but to state reasons, and I am persuaded unanswerable reasons, why you will not suppose him guilty of the crime with which he is charged); when you compare that fact with the nature of the confessions, is it possible to conceive that the prisoner could be the man, to conceal a design against the French captain, and to harbour a design against the life of his sovereign?

Gentlemen, I really feel now that I have exhausted almost every part of this case, yet there are two topics remaining upon which I must likewise submit my opinion to you; and, I think, I can account for them in such a manner, that if any impressions should remain on your minds with regard to them, those impressions will soon be wiped away. The first is his changing his name to Wilson before he left France; the next is his conduct upon landing in England. As to his change of name in France, can any thing be imputed to it at all? You observe, from the evidence of all the witnesses, that he was known by his real name to every man that came home in the cartel ship, and that he lived with them constantly during their captivity. You have it proved that he was a man in very difficult circumstances, as to his pecuniary affairs. Consider then the change of name upon any rule or principle of common sense. His name of Crossfield was perfectly known to every body long before he left France. They say it was not so generally known at first, although Le Bretton admits that Clarke might have known that his name was Crossfield. Le Bretton says, he knew him generally by the name of doctor; but he who had been known originally by the name of doctor (the usual appellation for the surgeon of a ship among sailors) was universally known in the French prison ship, by the name of Crossfield—universally known by that name: observe what he does; he changes his name, when he is to come to England in the company of the very persons with whom he lived

under the name of Crossfield. It does not appear that when he landed here, and was taken at Fowey, under the justice's warrant, that he ever attempted to conceal his real name. None of the witnesses who were brought to prove the taking him into custody, at Fowey, prove that he there called himself Wilson; on the contrary, he answered without hesitation to the name of Crossfield, as Colmer, the constable, proved on his cross-examination. How does the prosecutor's case stand then in point of consistency? He first declares his treason, he then makes known his name, and lastly he takes a false name in the full knowledge of all those whom he is supposed to have made acquainted with his crimes. Can a conclusion of criminality be drawn from such conduct?

The other circumstance regards his conduct upon landing. You have heard what the nature of his character is; you have heard of his levity, and of his habit of intoxication. I admit that you have not had it yet proved positively that he was very much intoxicated at the time he was taken at Fowey; but the witnesses would not venture to swear he was sober. Nay, they admit he was a little intoxicated. Intoxication is no defence against a crime, but it is a clear defence against that sort of conduct which is to raise an inference of a crime. Although drunkenness will not release a person from the guilt of a crime actually committed, yet drunkenness, most undoubtedly, where you are only to raise an inference from a man's actions, will weaken or destroy any inference to be raised from his actions. Now observe what he does after he had the conversation with the constables. His conversation, as you will recollect, was pressing the constables who took him to let him go; that the constables asked him if they let him go how they should get rid of the postillion; to which, they said, Crossfield answered, "give me one of your pistols and I'll pop at him." Immediately after this he falls fast asleep, and he sleeps more than half the way between Fowey and Bodmin. Is it not most extraordinary if this person was not either inebriated, or in such a state that his mind should receive no impression from the apprehension of the crime for which he is now tried, that, after a conversation of this kind, he should have fallen into a sound sleep, and remained in it all the rest of the journey? Here again therefore I call upon you to examine this case according to the common rules of probability; and say, whether the conclusion must not necessarily be that this strange wild conversation was the effect of drunkenness.

I have, I think, gone through every thing with relation to the evidence that has been given, and it is now my purpose very briefly to address you upon the nature of the evidence which I shall lay before you. I shall do this gentlemen very briefly for many reasons.

First of all, because I have consumed a

great deal of your time. In the next place, because my learned friend (Mr. Gurney) who comes after me, I know will observe on it after it is given with great ability, and with great advantage to his client. But, gentlemen, there is a part of it which I am under the necessity of stating to you very particularly, because it relates to one of the main and singular features of this case. You have heard again and again, from Mr. Attorney General of the name of Upton; you have heard that name from many of the witnesses, and from Mrs. Upton, the widow (as she stated herself) of Upton. I hardly know, gentlemen of the jury, how to unfold to you the extraordinary circumstances I am about to mention. There was no part of this case, I do assure you sincerely, that gave me more anxiety than the report that this person had been drowned, or was no more. I knew that if he had been brought here, his demeanour, and those circumstances that could have been proved against him, would have completely satisfied your minds upon this subject, and that all those observations, which I have had the honour of addressing to you, would have received additional aid, from his deportment, and from his character.

The evidence of Mrs. Upton is, that her husband's hat is the only part of his apparel which has been found, and that he left a seal with her the morning he went away. I could not understand what my learned friend, Mr. Garrow, meant by interrogating her as to the seal, unless it was to represent the delivery of it, as a token of love and friendship, which he left with a wife whom he was to see no more, being determined to destroy himself. I can put no other construction upon that fact. Gentlemen, his hat has been found, but Mrs. Upton did not say his body has been found; and yet it is rare indeed if a person has been drowned, that there should be nothing found of the body. And it is more rare in this country than in any other, because we all know there is a legal proceeding upon all events of that sort.

It is certain that Upton has not appeared since that day. Whether he will be seen again in this world or no, I am sure I cannot pretend to say; but I am perfectly sure of this, that I shall be able to lay before you testimony, which will at least amount to as strong proof of his being alive, as the evidence given by Mrs. Upton is proof of his death.

Mr. Attorney General.—The Court stopped me in this; I only now lay in my claim to answer the evidence if any such is offered.

Mr. Adam.—Gentlemen, I have received the intimation of my learned friend, as I receive every intimation from him, I am sure, with great respect. I have considered (as far as the moment will give me an opportunity of considering) what course I shall steer upon this intimation; and, I have no hesitation in saying to you, and in saying to my lord,

that whatever the wisdom of the court may hereafter determine, with regard to the testimony that my friend wishes to propose upon that subject, I think it so essential to this case in one point of view, though not at all so in another, that the evidence with respect to Upton's being alive should be laid before you, that I shall certainly think it my duty to offer it. When I say in one and not in another respect, I will state to my learned friend, how I do not think it essential in one view: It is not from the least idea that every diligent search, that every active inquiry which talents and integrity can direct, and industry and fidelity can execute, has not been used upon the present occasion, in order to obtain this man, and to bring him into court as a witness; because I know perfectly well, that my learned friend never states for effect, that which he does not mean to prove; and, therefore, when I say that I shall give evidence which will raise doubts respecting Upton being alive, I say it without the least view of raising the most distant suspicion, that every industry has not been used to discover him, for no person can pay any man higher respect than I do the person who exercises the function of inquiry and preparation in these proceedings. But in another respect I think it most essential to go into the evidence, and I think so for this reason: Because if I can raise a doubt in your minds with regard to the existence of this man, if I can fasten upon your understandings a belief that this man is not dead, but has gone out of the way, if I can raise a presumption that the seal was delivered as a trick and as a plan: and that this man (who had committed almost every other crime) had contemplated or wished others to believe that he contemplated to end his life by suicide, if I can establish those things, I prove the foundation of this plot to lodge in a character and to result from a mind fraught with such infamy, loaded with such opprobrium, that I hardly know how to find words to express myself on the subject. Therefore as this plot has declaredly its origin in Upton, I think it essentially necessary for the interests of my client to bring forward this evidence.

Gentlemen, I have already observed somewhat upon this evidence, and therefore, I will not take up your time one moment longer respecting it. When it is given, it will be for my friend (Mr. Gurney) to direct your attention to its effect; and if the case should take the turn which it seems it may possibly do, from what the attorney-general states, I may have an opportunity again, perhaps, of addressing some words to you upon the whole of the evidence relating to Upton.

The other evidence which I have to lay before you, I have almost sufficiently pointed out in the course of what I have said. I shall produce some witnesses, who were in France, to the facts which occurred there to repel the confessional evidence. I shall pro-

duce a variety of witnesses to Upton's character. I shall produce a variety of witnesses to the circumstances of the times when the plot was contrived (though they are proved by the history of the times, and will be admitted). I shall call witnesses to the inquiries, the disputes, the rancour, the animosity, and the challenge between Upton and the other prisoners, concluding with testimony to Crossfield's good character, and there my case will rest.

I have now little more to add. I have however to return to you my most sincere, and I do assure you my most grateful thanks, for the kind attention which you have been pleased to pay to me during a very long address, in a case in which I have felt great and almost unsupportable anxiety.

I cannot fail to have perceived, from the nature of the evidence, that prejudices may have arisen in your minds, and in the minds of those who heard the evidence, with regard to the prisoner at the bar; for the evidence certainly went to a variety of points which tended to show the general disposition and tendency of his mind to be loose and regardless of what is right, but it does not show the particular application of that mind to the matter of which he is accused; and I am sure that you will lay aside all impressions except such as the evidence in support of the charge necessarily makes upon you.

That unfortunate gentleman stands now before you, after you have heard the evidence, to have his deliverance, or a verdict of guilty. The whole form of my address has, I hope been calculated to impress soberly, seriously, and I trust, without any impropriety, upon your minds, the necessity of a deliverance of acquittal. Consider gravely upon what this cause principally depends. Recollect, that there is no colour whatever given to the treason in question but from the evidence of confession. I will not weary you with a repetition, or even with a summary of arguments upon that part of the subject. I have relied on authorities from times when men thought with great clearness, and spoke with great force: borrowing from these times, in presenting to your understandings the particular duty which you have to discharge in this serious case, I shall have recourse to words more emphatic than any that my mind can suggest.

Gentlemen, my lord Strafford, when he was tried for such a crime at the bar of the House of Lords, upon evidence such as you have heard, said, with that venerable and powerful eloquence which belonged to his superior mind: "It is now ages since any man was touched to such a height, on such evidence: we have lived happily for ourselves at home; we have lived gloriously abroad to the world; let us not awake those sleeping lions to our destruction, those sad precedents of judicial disgrace, which have lain so many ages by the wall forgotten and neglected."

Gentlemen let me apply these words to the present case; let me intreat you, not slightly, "upon such evidence, to awaken the sleeping lions to our destruction." What is evidence against one man may be evidence against all. The case of every individual prisoner that comes before a jury is the case of the whole community, because the whole community are interested in the distribution of justice, and in the principles upon which juries decide. This case, in that view of it, like every weighty prosecution, is a very important one. In that view I intreat you to consider it; and, without adding one word more, I again, on behalf of my client and myself, return you my sincere and humble thanks for the attention with which you have honoured me, and I anxiously implore heaven so to govern your minds, that you may deliver your judgment in mercy, by a verdict of acquittal.

Mr. Gurney.—We shall now call evidence to disprove the existence of the conspiracy charged in the indictment.

Mr. James Parkinson sworn.—Examined by Mr. Gurney.

What is your profession?—A surgeon and apothecary.

Where do you live?—In Hoxton-square.

Were you in the months of August and September, 1794, a member of the Corresponding Society?—Yes.

Did you, at that time, frequently attend their meetings?—The meetings of the committee of Correspondence, not the general committees.

Was a person of the name of Upton a member of that committee?—No.

Was Mr. Le Maitre a member of that committee?—No.

Was Mr. Higgins a member of that committee?—He was.

Was Mr. Smith a member?—He was.

Were there, to your knowledge, any inquiries instituted in that committee, or in the general committee, by either Le Maitre, Higgins, or Smith, respecting Upton?—By Higgins and Smith there was an inquiry instituted, at the request of the committee or correspondence, among whom I was one, who was very solicitous for that inquiry into the character of Upton.

What was the charge which they then brought against Upton?—It was stated either by Mr. Smith or by Mr. Hodgson that he had heard it reported that Upton had set his house in Coldbath-fields on fire.

Was that inquiry pursued to any considerable length?—They were desired at a meeting of the committee to make the inquiry.

Lord Chief Justice Eyre.—You do not mean, I hope, to detail to this Court the proceedings of such a committee upon a charge which ought to be heard here and not there; if you go to the point to show that there was any enmity between Smith and Higgins and Upton, very well; but I beg, for the honour

of this Court, that we may not have their proceedings detailed here.

Mr. Gurney.—I only wish to show, that the inquiry was instituted at the instance of those persons; with submission to your lordship, I could not come at the effect without the cause. Were there, in point of fact, any disputes upon that occasion between Smith, Le Maitre, or Higgins, and Upton?

Witness.—I can only speak of any dispute that subsisted between them by the report of Smith and Higgins.

That is not evidence. Did you, upon that occasion, see Upton yourself?—Only once; which was for the purpose of delivering to him, or carrying a letter to be delivered to him, expelling him from that society.

Were you at any meeting of the Corresponding Society, at which Smith, Higgins, Le Maitre, and Upton were present?—At one meeting.

Did any thing pass at that meeting between these parties, either peaceable or hostile?—Nothing particular.

Mr. James Parkinson cross-examined by Mr. Attorney General.

Are you the same Mr. Parkinson that was examined here some little time ago?—The same.

Are you the same person that produced, upon that examination, a paper intitled, *La Guillotine, or George's Head in the Basket*?—I do not know that it was produced in court; it was not produced by me.

Are you the same person that produced that paper at the privy council?—I produced no such paper at the privy council.

Have not you had in your possession a paper called *La Guillotine, or George's Head in the Basket*, that you got at that society?—I have that paper now.

Have you it about you?—I have it not here.

You had it here at the time of the trial I allude to?—I had it.

Do you know a person of the name of Pearce, who was a member of the society?—Yes.

Have you forgot that Le Maitre, Higgins, and Smith, met at Pearce's, and were reconciled over a bottle of wine?—I do not forget it, because the gentleman who asks the question told it me.

Do you or do you not know, that having had a quarrel they were reconciled, and met at Pearce's upon that reconciliation?—I heard that they were reconciled, but I knew the place from the learned counsel, and from no one else.

You knew that they were reconciled not from the learned counsel, you heard the place from the learned counsel as I understand you?—I was informed they were reconciled before you informed me of it.

Lord Chief Justice Eyre.—Who were reconciled?—Le Maitre and Upton.

Mr. Gurney.—He only says he heard it. Mr. Attorney General.—Do you know Hill, the turner?—Yes.

You had a considerable situation, I understand, in the society you belonged to—you were one of what is called the Committee of Correspondence?—I belonged to the Committee of Correspondence.

Sometimes, I believe, called the Secret Committee?—Once, called so in my hearing, by Upton, for which he was very much reprobated.

Hill was a member of the society, was not he?—He was.

Do you recollect going to Hill, after some of those persons had been apprehended?—I went to Hill for the purpose of gaining all the information that I could respecting this business; I went to other places for the same purpose, that I might give the privy council all the information I could.

You never heard of any quarrel that Upton had with Crossfield, did you?—Never.

Did you hear from Hill any thing about any models that any body had given him orders for?—It was in consequence of Hill having mentioned his uneasiness of mind respecting something which he had turned that I called upon him; it was not until then that I conceived there could be any thing in the plot.

Did he name to you, or to any body in your hearing, who the person was that came to bespeak the models?

Mr. Gurney.—I submit to your lordship that is not a question to be asked.

Mr. Attorney General.—I will not pursue it then. Do you know Crossfield's handwriting?—No.

Did you ever see him write?—Never.

Mr. James Parkinson re-examined by Mr. Gurney.

You have been asked respecting some paper which it is said you got in the society. Did you or not get that paper in the society?—I swear positively I did not.

Mr. Attorney General.—Mr. Parkinson, I must beg of you not to go away.

John Bone sworn.—Examined by Mr. Gurney.

What are you?—A muslin clearer.

Where do you live?—At No. 8, in Weston-street, Southwark.

Were you, in the months of August and September 1794, a member of the Corresponding Society?—Yes, I was.

Were you a member of the general committee?—I was.

Was Mr. Upton a member of that committee?—He was not.

Was Mr. Le Maitre?—He was.

Was Mr. Smith a member?—Yes.

And Mr. Higgins?—He was.

Was Mr. Crossfield a member?—He was not.

* See this paper, *antè*, Vol. 24, p. 682.

Do you know of any disputes between Upton and Smith, Higgins or Le Maitre, or either of them?—I do.

When did these disputes originate?—I cannot be particular as to the time when they took place; it was some time after the commencement of August.

How long did they continue?—I never knew that they were healed, because they originated in Upton's bad character; they had a bad opinion of him in consequence of that bad character, which I never knew was taken off.

Can you recollect the days upon which Smith, Higgins, and Le Maitre were taken up?—I believe it was on the 25th of September, or somewhere thereabouts.

Mr. Gurney.—I dare say the dates will be admitted.

Mr. Attorney General.—I rise to state my admission of the times when these persons were apprehended.

Mr. Gurney.—Le Maitre and Higgins were apprehended on the evening of the 27th, and Smith on the evening of the 28th. Now, were those imputations respecting Upton's character supported by either Smith, Higgins or Le Maitre?—Yes, they were by Smith and Higgins, I know; I never had an opportunity of conversing with Le Maitre, because I only saw him in the general committee.

Were you at any meeting when Le Maitre and Upton were present?—Yes, in the general committee.

At that time was there any charge brought by Le Maitre against Upton?—I do not recollect that there was.

Was there any dispute between them at that time?—There was a great dispute.

Was that dispute carried on with a great degree of violence?—Yes, on both sides.

Can you recollect the date of that?—Yes; it was, I believe, on the 4th of September.

Do you recollect any of Upton's expressions respecting Mr. Le Maitre at that time?—I remember that they quarrelled. That their quarrel rose to a considerable height, and they threw the whole assembly into a very great degree of agitation, in consequence of a letter that had been conveyed into the general committee, casting a stigma upon the committee and the society, which letter appeared to have been written by Upton. When the letter was known to be written by Upton, and he confessed it, Le Maitre was remarkably severe upon him; he called him *the man*, for he considered him unworthy the name of *citizen*, and thought he ought to be turned out of the committee; Upton, in consequence of this, broke out in a strain of abuse, and used all those epithets which men in the habit of abuse are accustomed to use.

Do you recollect any particular expressions that he used?—No.

Were they expressions of a violent nature?

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—They were violent; Upton threatened to be revenged of Le Maitre; Le Maitre said, that if he had any thing to settle with him he had better do it at another time than the present; and for that purpose he wrote his address and gave it him.

Were you present at any quarrel between Higgins and Upton?—The same evening, in consequence of Upton's very disorderly behaviour in the general committee, a vote of censure upon Upton was moved by Higgins in the general committee; the committee discussed the propriety of it; some were for passing the vote, others against it; but the generality of the committee being of opinion that a vote of censure should be passed upon him, Upton seemed inclined to avoid the disgrace of a vote of censure, by moving towards the door in order to go away, Higgins then rose, and said to the chairman "if you are about to pass a vote of censure upon Upton; you must be quick, for he seems to be hopping off." Upton felt himself extremely angry, and said, "You wretch, that is a reflexion upon my natural infirmity." Higgins replied, "if he was to answer him in his own dialect, he should tell him he lied, but it should suffice at present to say he did not mean it so."

Upon that occasion, or any other, was there any dispute between Upton and Smith?

—I do not recollect any dispute between Smith and Upton; but Smith, Higgins, and myself, were members of the committee of correspondence, where Upton's bad character was first broached, and Smith and Higgins were very active persons in getting information for the committee relative to his character upon this occasion; Smith said, that if Upton's name was continued in the printed lists of the society, his name should not continue in it.

Where you present at any other dispute between Upton and those persons?—I do not recollect that I was.

Were you present at any meeting subsequent, when any thing like a reconciliation is supposed to have taken place?—Certainly not.

Was this inquiry, by Smith, Higgins, and Le Maitre, concluded at the time of Upton's examination, and of their examination?—The business had come to a conclusion, for aught we knew; for we had resolved to publish our lists without the name of Upton being in them.

Mr. Gurney.—Then, in point of fact, this inquiry, thus pursued, had not terminated till the night before their apprehension?

Lord Chief Justice Eyre.—He mentioned a fact, that the night before they had resolved to publish a list without Upton's name.

Mr. Gurney.—Had the inquiry been pursued regularly from its commencement till that time?

Lord Chief Justice Eyre.—Ask him what they did respecting it afterwards.

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Mr. Gurney.—Do you recollect any specific date, subsequent to the 4th of September, when any thing passed between Upton, Smith, Higgins, and Le Maitre?—I do not.

But, in point of fact, the inquiry had not terminated till the night before his apprehension?—It had so far terminated that we were satisfied about Upton's character.

John Huttley sworn.—Examined by Mr. Adam.

What are you?—A watch-spring maker.

Where do you reside?—In Great Sutton-street, Clerkenwell.

Did you know Upton, the watch-maker?—

Yes.

How long have you known him?—I had a knowledge of him for about five years.

Did you see him about the month of September, 1794?—That was about the time.

Do you remember any conversation that passed between you and him at that time?—I was in company with him and another person.

Perhaps you may recollect it better if I tell you that a person of the name of Brown was present?—He was.

What was that conversation about?—Concerning the persons who had been taken up; Le Maitre, Higgins, and Smith.

What passed upon that subject between you?—I walked backward and forward, I looked upon Upton to be a dangerous man, and I did not care to be seen with him: I heard him discoursing concerning these people with Brown; he said it was their own fault, that he should never have troubled his head about it, but they had made very free with his character: I said, perhaps they may have known as much of you as I have known.

Was any thing more said about these people?—No.

William Brown sworn.—Examined by Mr. Adam.

Do you know Upton?—Yes.

Do you remember having had any conversation with him in September, 1795?—Yes.

What did it relate to?—I was asking him his opinion concerning Crossfield, what it was that he was detained for; he said, God knows, I cannot tell: he mentioned the place where he was detained, down in the country, but where I cannot recollect: I asked him farther if he knew what the chief accusation was against him; he said, he did not know.

Had you any conversation with Upton about Le Maitre or Higgins?—Yes; I asked him if he did not know Higgins and Le Maitre; he said, yes, he knew Higgins, Le Maitre, and Smith, they were three damn'd villains, and had used him in the most villainous manner, and that they were still continuing to hurt his character in every place where he went, that they had attacked him in the street, by giving him the name of informer, and abused him in that manner, and had gathered a great number of people round him; that he thought

his life was in danger by them, and if they did not desist he would take some other means. I told him he should make an allowance, considering the ill-usage he had given them, by laying an accusation against them apparently unfounded, as the prisoners had been acquitted; he said, I was unacquainted with the former part of the story seemingly; and then he told me he would relate the whole to me; he said, "that prior to that, when the state prisoners before were taken up, some of their families being in want, the London Corresponding Society chose to raise subscriptions, to give some little assistance to some of the families, they thought it convenient to open a public subscription, and that among the rest of the houses to be opened for that purpose mine was one; that Higgins, Le Maitre, and Smith came forward, and accused me as a thief, and a swindler, and an incendiary, and the society refused to give me a fair trial upon it; and they still continue to go on in that abusive style in public company." I told him that this accusation certainly could not arise from nothing; he said, "he would tell me what it arose from;" he said, "he did once keep a house in Cold-bath-fields; that his house was burnt, and that he was advertised, and a reward offered for the apprehension of him—that he agreed with a friend of his, that provided he would give him a note of hand, payable to him, or to a part of his family, for a part of the reward, he would disclose something which would bring him in so much money; accordingly his friend did so, and his friend delivered him up to justice;" and he appealed to me to know whether there was ground for them to accuse him in public for such a thing as that, if such a powerful body of men as the Phoenix office, had entered a prosecution against him, and had not been able to prove any thing against him, whether he was not acquitted in the eye of the law, and whether any man ought to come forward and publicly accuse him. I made a reply, that there was room for suspecting him to be a man of a bad character; and whether he had brought the accusation against Higgins, Le Maitre, and Smith, from a good or a bad motive, that it had done the society good rather than harm, for the society had increased in three weeks more than ever it had done before.

Mr. Adam.—Have you any thing more to say about Upton and Le Maitre?—No.

Mr. Attorney General.—I have no objection to any of these orators; I am ready to admit that Upton is what he stated himself to be, when he brought forward such a charge in which he was the accomplice; that he was as bad a man as you please; and I have no objection to your taking his motive to be as malicious as you please.

Mr. John Clarkson sworn.—Examined by Mr. Adam.

Where you a prisoner at Brest, when Mr.

Crossfield was a prisoner there?—I was.

Did you live on board the same prison ship with him?—I did.

For how long a time?—From the 19th of February till early in May.

Had you an opportunity of seeing much of Mr. Crossfield during that time?—Yes, I was constantly with him.

Were you with him at the time he came away?—No, I went to the hospital ill.

You remained behind when he came away?—I was in the ship after he left it.

During your intercourse with Mr. Crossfield, have you ever heard him make any declarations respecting the king?—No, I do not recollect any; I have frequently heard him sing republican songs.

Did you ever hear him make any declarations respecting any plot?—Never.

You lived with him very constantly?—Yes.

Did you mess with him?—Yes.

Who was at your mess?—Captain Clarke.

He was the captain of the Pomona?—Yes.

Mention the names of any others that you recollect?—Captain Bligh.

Is he in England now?—I believe he is at Exeter, Mr. Dennis, Mr. Denton, the mate of captain Bligh's ship.

Do you know whether he is in England?—I believe he is at Exeter.

Who else?—Mr. Widdiman, the mate of the ship I was in.

And you were all at the same mess together?—Yes.

Mr. Crossfield used to be very jolly?—Yes. I believe it was a custom there for persons who were sick on board the prison ships, to be carried ashore to the hospital?—Yes.

Did it require any serious illness to be carried on shore to the hospital?—No, I had a slight illness, and went to the hospital; I was in the hospital from the 18th or 19th of May, till sometime in July.

In consequence of that you did not come over in the cartel?—I came over in the same cartel.

Could you have avoided coming over in that cartel?—I did not try, I wished to come over.

If you had rather wished to have remained, could you not have remained there?—I cannot tell that.

Should not you, upon a representation of a slight illness, have been carried to the hospital?—Yes; several persons had been carried to the hospital, two or three days before we came away, and consequently did not come over in the cartel.

Did you come in the same ship with Mr. Crossfield?—I did.

You knew him perfectly well by the name of Crossfield?—Yes; he signed his name as a witness to some papers of mine.

At what time was that?—Early in May; a little before I went to the hospital.

Was he generally known, in your mess, by the name of Crossfield?—We always called him doctor, in the mess.

But his name was known?—Yes, it was to me, because I saw him sign his name.

You called him doctor, as you would any other medical man?—Yes.

Was he the only medical man in your mess?—He was.

How long were you in your passage over?—Three days.

Were Le Brétton, and Dennis, likewise in the cartel?—Yes.

Did you ever happen to see them and Mr. Crossfield together?—Never particularly engaged in any conversation.

Do you remember seeing them particularly together in Brést harbour?—No, not more so than others.

Did they live in that sort of intimacy that you could suppose Mr. Crossfield told them any secret?—They were intimate, captain Clarke, and Mr. Crossfield and them, the early part of their time.

How came Dennis and Le Brétton not to be so intimate with them the latter part of the time?—I understood it was from a watch that Mr. Crossfield had of Mr. Clarke's that he would not give up to him.

Did you ever hear any conversation between Le Brétton and Dennis, and Mr. Crossfield, upon the subject of what was in the Pomona, at the time of the capture?—No; but I heard Crossfield say, that he would take this watch.

Mr. Crossfield then continued in your mess till the very last; did he mess with you in the cartel as you came over?—No.

Where did you land?—At Fowey, in Cornwall.

How did Mr. Crossfield appear, at the time of coming away from Brést?—He appeared to me to be very glad that he was coming home.

He did not show the least unwillingness to return, did he?—No.

What is your profession and situation in life?—I was going out agent to the Canaries.

For whom?—For a house in St. John-street. And you were captured?—Yes.

Did Mr. Crossfield drink hard?—Very hard.

You were going out agent to the Canaries?

—Yes, I was going out for wines for government.

Mr. John Cleverton, cross-examined by
Mr. Attorney General.

You say Mr. Crossfield appeared to be very glad when he was coming home?—Yes.

Perhaps you might have been by when he said, just before he came away, that things had been all settled now to his satisfaction?—I do not recollect that expression.

Were you by when he was mustered by the name of Wilson?—I was in the ship, but I do not recollect his being mustered by the name of Wilson; I heard he had put his name down as Wilson in the list, but I never saw it.

You frequently heard him singing republican songs?—Yes,

Did that occasion any quarrels among you?
—Never.

Do you recollect a song, with a chorus that began, Plant, plant the tree?—I do.

Mr. *Attorney General*.—Be so good as read that [giving a paper to the witness], and tell me whether you ever heard the prisoner sing that song?

Mr. *Adam*.—Does your lordship think this is evidence?

Lord Chief Justice *Eyre*.—I do not know whether this song will amount to any thing; he has said he never heard the prisoner say any thing about the king.

Witness.—I do not recollect whether that is exactly the song he sung.

Mr. *Attorney General*.—I offer it both to prove the fact the witness has already sworn of singing republican songs, and offer the matter of it as part of the prisoner's declaration upon that very subject. Read it through, and tell me whether you have any doubt about it.

Witness.—I have no doubt.

Mr. *Attorney General*.—Then I offer this as evidence.

[It was read by Mr. Shelton.]

" See, Britons, see, that rising beam,
The Eastern skies adorning;
'Tis freedom's sun begins to gleam,
And wakes a glorious morning.

Now despotism from France is chas'd,
And church illusions vanish'd,
Ne'er let them in our isle be plac'd,
But far from Britain banish'd.

CHORUS.

Plant, plant the tree, fair freedom's tree,
Midst danger, wounds, and slaughter;
Each patriot's breast its soil shall be,
And tyrants blood its water.

They come, they come, see myriads come,
From Gallia to invade us;
Seize, seize the pike, beat, beat the drum,
They come, my friends, to aid us.

Let trembling despots fly the land,
To shun impending danger;
We'll stretch forth a fraternal hand,
To hail each glorious stranger.

CHORUS, Plant, plant the tree, &c.

That palace which for ages past,
To despots was appointed;
The sovereign people claim at last,
For they're the Lord's anointed.

The useless Crown which long adorn'd,
The brows of Royal Ninnies;
To nobler purposes is turn'd,
Coin'd into useful guineas.

CHORUS, Plant, plant the tree, &c.

Those high nicknames Lord, Duke, and Earl,
Which set the croud a gazing;
Are priz'd as hogs esteem a pearl,
Their patents set a blazing.

No more they vote away our wealth,
To please a King, or Queen, Sir;
Now glad to pack away by stealth,
To 'scape the Guillotine, Sir.

CHORUS, Plant, plant the tree, &c.

Our Commons too who say forsooth,
They represent the nation;
Must scamper East, West, North, and South,
To 'scape our indignation.

Their Speaker's mace to current coin,
We presently shall alter;
And ribbands late so gay and fine,
We'll change for each an halter.

CHORUS, Plant, plant the tree, &c.

On holy mummeries our boys,
Contemptuously shall trample;
And yonder dome that props the skies,
Shall turn to Reason's temple.

Then çà ira, each corps shall sing,
To cheer the broken hearted;
And Priestcrafts bells no more shall ring,
To thund'ring guns converted.

CHORUS, Plant, plant the tree, &c.

Behold the Bank its specious trash,
Unworthy our regarding;
Mere paper wealth, ideal cash,
Whole pounds not worth a farthing.

The Stocks like vapours on the hills,
Shall vanish from our sight, Sir;
And Abraham Newland's swindling bills,
May cover paper kites, Sir.

CHORUS, Plant, plant the tree, &c.

Those Lawyers see, with face of brass,
And wigs replete with learning;
Whose far-fetch'd apophthegms surpass,
Republicans discerning.

For them to ancient forms be stanch,
To suit such worthy fellows;
Oh, spare for them one legal branch,
I mean, reserve the gallows.

CHORUS, Plant, plant the tree, &c.

'Tis done, the glorious work is done,
Rejoice with one another;
To plowshares beat the sword and gun,
For each man is your brother.

Detested war shall ever cease,
In kind fraternization;
For all is harmony and peace,
And all the world one nation.

CHORUS, Plant, plant the tree, &c.

Mr. *Attorney General*.—Was the chorus sung at the end of each of these verses "Plant, plant the tree, &c."?—I do not recollect whether it was or not.

You remember the chorus?—I remember the chorus perfectly well.

Perhaps you may have a recollection of some other songs sung by the prisoner?—do not immediately recollect any.

Favour me with casting your eye over the song? [showing the witness another paper].—I do not recollect his singing this song.

Mr. John Cleverton re-examined by Mr. Adam.

Can you take upon yourself, positively, to swear, that these were the words of the first song that he sung?—No, I cannot; I never heard him sing it above once or twice, and I paid very little attention to it.

And for aught you know many of the verses may have been transposed?—They might, but I cannot say.

Mr. Anthony Collins sworn.—Examined by Mr. Adam.

Were you in the prison-ship, at Brest, at the time Mr. Crossfield was there?—I was; I commanded one of them.

I understand that they were English ships, and they had put English captains on board to command?—No, we were carrels, we were detained there for a long time; they thought proper to convert the ships into prison-ships, and in consequence of that we were filled full of them.

Was Mr. Crossfield one of the prisoners on board?—He was; I heard there was a medical man on board one of the other ships, he was not then on board my ship, and I made application to the commandant, and he granted me the liberty to invite him to come on board, to take care of the sick prisoners, which he did with great care and attention; and I am confident he saved fifty or sixty lives, from his great care and attention; during the time he was on board he lived with me in the cabin, along with several other gentlemen.

Do you recollect the names of these gentlemen?—There were two brothers of the name of Byron; there was captain Lambton, captain Taylor.

Do you know whether the Byrons are now in England?—One of them is now at Portsmouth.

Was he a captain of a ship?—No, a passenger.

What rank of life is he in?—A young man.

And a person in the same station of life that you yourself are?—Yes.

Do you know where Mr. Taylor is now?—No.

Captain Lambton?—He is now at New-castle.

Do you remember any more gentlemen who were on board?—Not at that time.

Did you live in great intimacy with Mr. Crossfield?—We did so.

You say he has a good deal of skill in his profession; but independent of that, what sort of character is he?—I did not know the man before.

Did the glass go pretty freely round?—Our situation was such, that for want of better employment it did so.

Did Mr. Crossfield ever say any thing to you about any plot he was concerned in?—During the time he was in my company, I solemnly protest, that not a word of the kind was ever mentioned about plots, or any thing against his majesty or the government.

Do you know an old man of the name of Winter?—I do, he was one of the mess at that time whenever he chose to come.

Do you remember any stories of Winter's telling?—Oh, yes, a number of silly foolish things he used to tell.

Do you recollect any particular story about any animal that he caught?—Oh, a number of foolish stories of that kind, I remember several; one was, of his catching the devil in the shape of a hare, and such ridiculous nonsense as that.

Did he say, that he took this hare for the devil?—He certainly did; and was very much displeased when we contradicted him.

You take upon yourself to swear, that he used to say that this hare was the devil?—Yes, that he believed it to be so; and not only that, but he told another story of the same kind.

He was, in short, a man who dealt in the marvellous?—He did; and he was the common laughing stock of the whole ship's crew. Indeed, from his own conversation I believed he was somewhat flighty at times; I understood that he had lost a good deal of property; whether it was from that, or his imprisonment, or one thing or another, but I really believe at times he was; in short, the sailors laughed at him. I have known him myself, walking the deck, and talking to himself a whole night, I have got up frequently and seen him walking and talking to himself the whole night; he was a man that slept very little, he was the last in bed, and the first up.

Was not Winter a person you used to make a sort of butt of?—He was.

Lord Chief Justice Eyre.—He said he was the common laughing stock of the ship.

Mr. Adam.—Had you any conversation with Winter upon the subject of Mr. Crossfield?—No, never any private conversation of any sort, for he was a man not of the cast for me to converse with.

Mr. Anthony Collins cross-examined by Mr. Law.

You were particularly intimate with Crossfield?—Yes, as living with him.

He would probably tell you the reason of his leaving England?—He never did; only mentioning his pecuniary circumstances that they were deranged; in short, he had no money, and has asked me for a little.

He never mentioned a word of what made him leave England rather suddenly?—Nor that he had left England suddenly; only that he was taken in a ship going to the South Seas.

As the grog went about pretty freely, I take for granted you had songs?—We sung of course to pass the time away.

Were the songs orderly, favourable to good government, or what?—I do not recollect any songs against the government.

You never happened to hear him sing a song, the chorus of which was

"Plant, plant the tree, fair freedom's tree,
'Midst danger, wounds, and slaughter;
Each patriot's breast its soil shall be,
And tyrants' blood its water."

You never heard him sing such a song as that?—I do not recollect any thing of the kind.

He was quite another sort of man?—Yes.

Probably his usual song was God save the King?—I do not recollect that.

Rule Britannia?—That of course was sung. Have you heard him sing Rule Britannia?—I cannot say I have heard him sing that, but in the company we have done it.

But you never heard him sing any song of a seditious, or bad tendency?—I have not.

And you never had any communication from him of the reason of his leaving England?—No.

Did you happen to know by what name he was mustered, when he came for England?—I was informed he had put down a different name.

Did not you think that odd?—From his circumstances being in a bad state in this country, I supposed he did not choose to be known.

You understood it to be to protect himself from any inquiries of his creditors; and not to screen himself from any inquiries of government?—Yes.

And his behaviour was uniformly that of an orderly and good subject?—Yes.

And you were with him every day from April to August?—Yes.

He was rather remarkable for the decency of his conduct, a man you would rather describe as eminent for his loyalty?—As to his political principles he never said any thing in that respect, except reprobating the war, that it was an unjust one.

But in other respects he was a man of eminent loyalty?—Yes.

Mr. Anthony Collins re-examined by Mr. Adam.

You sung songs to divert the miserable time you passed in captivity?—Yes.

Did Mr. Crossfield seem miserable as well as the rest?—He did at those times and moments when he was serious; I likewise have heard him say that he had orders from the commandant to stay in the country to superintend the hospital, which he thought proper to refuse, as wishing to return to his own country; he told me that not only once, but several times; to superintend an hospital called Landernau, which he said upon consideration he refused, as he wished to come to his native country.

Mr. Law.—Were you by when he said that every thing was settled to his satisfaction?—He spoke French; and of course I did not understand him.

Did you ever hear him say what had been settled between him and the people at Brest,

which was so much to his satisfaction?—Nothing at all.

You never heard him say any thing had been settled to his satisfaction?—No.

You did not hear what terms were settled between them at the time of his coming away, that induced his coming back to England?—No; when the prisoners were to be released, he seemed to be rejoiced.

Lord Chief Justice Eyre.—Did you happen to know Mr. Cleverton?—I had some knowledge of him.

Lord Chief Justice Eyre.—Was he ever on board your ship?—Not more than once or twice; he did not stay on board; he was on board one of the other ships: he was I think part of the time at the hospital sick.

Elizabeth Smith sworn.—Examined by Mr. Adam.

Are you a married woman?—I was; but I have been a widow eight years.

Where do you live?—No. 17, Great Hermitage-street, Wapping.

How long have you lived there?—I have lived about eight years in that house.

How long did you live in the house you were in before?—About seven years.

Was that in the same part of the town?—In Red-Lion-street, Wapping.

So that for the last fifteen years you have been a constant resident in Wapping; in two houses?—Yes.

Do you know the prisoner Mr. Crossfield?—Yes, I do.

How long have you been acquainted with him?—Five years.

Have you seen much of him during that time?—Yes; he has been very often to and fro to my house.

Have you seen enough of him to know his disposition or character? Is he a man of levity, or a very serious man?—He is a man of levity.

Is he a man of a severe harsh temper?—No, quite the reverse.

Do you know captain Clarke who was captain of the Pomona?—Very well, he lodged with me.

How long have you known captain Clarke?—About two years. Do you know a person of the name of Le Bretton?—Yes.

How long have you known that person?—He was before the mast with captain Clarke, and so he used to come to the house; captain Clarke had my first floor; captain Clarke and his wife boarded in my house.

Do you remember Mr. Le Bretton coming to your house at any time to see captain Clarke, since captain Clarke returned from France?—Yes.

About what time was that?—I cannot exactly say; but I believe about ten days after captain Clarke left my house to go to Portsmouth, coming from the prison-ship.

Were you in company with these persons at that time?—Le Bretton called upon me, and

told me I might expect captain Clarke that night, for he had been examined at Guild-hall or somewhere, and he had wrote for him.

Did captain Clarke come?—He did.

Were you present with captain Clarke and Le Bretton?—Yes.

What did he say to captain Clarke? did he ask him whether he had ever heard this, or no?—Le Bretton said he had heard Mr. Crossfield describe a gun to him, in the presence of captain Clarke, and he said to captain Clarke you were present at the time; Le Bretton said he had heard Mr. Crossfield describe it, and that captain Clarke was present at the time; captain Clarke said he never heard it.

Did any thing else pass upon that subject between you?—Le Bretton said several times he hoped he would hang him.

You have known Mr. Crossfield, I think you say these five years; did he ever lodge at your house?—Yes.

Under what name did he lodge at your house?—Always under the name of Crossfield.

At what particular time did he lodge at your house?—He has lodged at my house at three different times.

Name the times, if you recollect them?—About three years ago; the last time that he lodged at my house was about a month before Christmas; it was in the beginning of February when he joined captain Clarke's ship at Portsmouth; he dined on Christmas day, 1794, with captain Clarke at my house; that was the day captain Clarke left my house, but Mr. Crossfield did not join the ship at Portsmouth for five weeks after that.

Where was he all that time?—In my house; he used to go to 'Change with captain White, a gentleman who lodged with me at that time.

Did he use to go about with captain White and other gentlemen?—Yes; to the 'Change and different places.

Mr. Attorney General.—You saw him there?—I did not see him there, but he used to go and return with the gentlemen.

Mr. Adam.—He used to go about without any concealment?—I never knew of any concealment.

Were you present when any thing passed between him and captain Clarke respecting his going to the South Sea?—Mr. Crossfield came into the house one day, and captain Clarke was speaking to a gentleman to recommend him a surgeon; Mr. Crossfield inquired where he was going, and said, perhaps he might go with him; that is all that I know.

What is your opinion of Mr. Crossfield's general character?—He is a very good natured man, that I am sure would hurt nobody.

Did Le Bretton say any thing farther about captain Clarke's having heard this matter that passed with respect to the plot?—No.

Did he press captain Clarke upon it?—He said two or three times that he was present.

Elizabeth Smith cross-examined by Mr. Wood.

Did Mr. Crossfield lodge at your house before he went down to Portsmouth?—He lodged at my house two months before.

And up to the time when he went down to Portsmouth?—Yes; he went some time the beginning of February.

You endeavoured to learn from Le Bretton and Dennis what they had sworn before the privy council?—No, I never asked them a question, nor I never heard Dennis say any thing, but I heard Le Bretton say that to Captain Clarke.

But have not you asked Le Bretton and Dennis what they had sworn before the privy council?—No, I never did; and he will not say that, I am sure.

Have not you endeavoured to persuade Le Bretton to be very favourable to the prisoner?—No, never.

You never applied to him for that purpose?—Never.

Nor ever said a word to him upon that subject?—I never did.

Let me put you in mind; did not you tell him that the truth was not to be spoken at all times?—I never did.

Remember you are upon your oath?—I do, and I am speaking the truth.

And you never said any thing to that effect to him, or to Dennis?—No, to neither of them.

Mr. Wood.—They may be called, and I wish you would recollect yourself?

Witness.—They may, and they will clear me if they are.

Mr. Wood.—Then you say you never interfered with them to be favourable to the prisoner, nor said that the truth was not to be spoken at all times, nor to that effect?—No, never; I had never seen them.

You had never seen them?—Not since that time, they were constantly about the house then, and that was the time to speak of it.

Mr. Adam.—I am going to call a witness for the purpose of proving that Upton is now living.

Lord Chief Justice Eyre.—We have had some evidence with respect to Upton. Unless you go the length of proving that Upton is alive, and is kept away by one side or the other, no observation in my judgment arises upon it in this case—it will remain an uncertainty whether he went away to avoid being now examined, and what were his inducements if he did so; or whether they were inducements that moved from the side of the prosecution, or from the side of the prisoner; or whether it was purely the effect of his own feelings—now all that being left perfectly uncertain, as you do not upon that you cannot prove that he is kept away; it seems to me as if that inquiry was really quite beside this case.

Mr. Adam.—Will your lordship permit only for the sake of stating the ground—

Lord Chief Justice *Eyre*.—If you think it right to call these witnesses, having admitted some evidence on the other side, which perhaps was rather admitted by way of anticipation than otherwise, I certainly shall not stop you.

Mr. *Attorney General*.—There is one circumstance material for my learned friends to be aware of, as in the nature of the thing this is evidence respecting a fact which has taken place since a copy of the indictment, and the names of the jurors, and of the witnesses were delivered to the prisoner; this point must arise, and it is a new point in the history of these sort of trials, namely, whether I am not at liberty to call witnesses to prove the death of Upton, which is a fact that has happened since the list of witnesses has been delivered to the prisoner; I apprehend I can call these witnesses; I take for granted Mr. *Adam* will not make an objection.

Lord Chief Justice *Eyre*.—Witnesses whose testimony arises from the evidence on the other side, can hardly be supposed to be within the meaning of the act of parliament; because, by no possibility can you know beforehand that you should need such evidence.

Mr. *Adam*.—I wish to state it in such a manner as to have it very distinctly understood—I am perfectly satisfied of this, and I am really anxious (though it may be a little out of course) to declare that I am persuaded every person concerned in this prosecution throughout the whole, is perfectly incapable of doing such a thing; and I should be extremely sorry if any thing that I state to the jury, or now address to your lordship, could possibly attach my name to the supposition of such a thing existing, and therefore most undoubtedly I cannot avail myself of that ground—namely, that I bring this evidence to prove that there have been measures taken to prevent Upton's coming here; I certainly cannot state that to be the ground, because every conviction, and every feeling that I have, is perfectly to the contrary: then it reduces itself exactly to this, whether your lordship thinks, strictly speaking, it is evidence that ought to be admitted or not, I certainly will not give your lordship the trouble of discussing the question.

Lord Chief Justice *Eyre*.—You do very rightly, because examining witnesses whose evidence has not a clear application to the cause only puzzles the case.

Mr. *Adam*.—In a case of this sort your lordship will forgive me for offering this evidence.

Lord Chief Justice *Eyre*.—I have no objection to every thing being stated, and sifted and giving you all the assistance I can to enable you to produce every thing you ought to produce.

Elizabeth Watson sworn.—Examined by Mr. *Adam*.

Where do you live?—I did live in Dyer's-buildings.

Did Mr. Crossfield, the gentleman at the bar, live with you?—He lodged in my house.

Under what name did he lodge in your house?—By the name of Crossfield.

You always knew him by that name?—I did.

Did he lodge in your house in September and October 1794?—He came on the 26th of July 1794, and continued as near as I can remember about two months.

Of course you knew a good deal of his manner and way of life; was he a man that was remarkably careful of his papers or any thing?—No he had nothing locked up while he was in my house.

Did he pass by his own name, and go about every where publicly?—Yes.

How long have you known him?—I never knew any thing of him till he came to lodge in my house.

When did he leave your house?—I cannot ascertain the day; he went about the end of September, or the beginning of October.

He did not come back again to lodge with you?—No.

Elizabeth Watson cross-examined by Mr. *Attorney General*.

Did he visit you afterwards?—No; I have never seen him since he left my house.

He did not pay you any visit at any time about Christmas, January, or February, or afterwards?—He did not.

Do you recollect whether inquiries were made at your house about him?—No inquiries were made after him after he left my house.

Margaret Beasley sworn.—Examined by Mr. *Adam*.

Do you know Mr. Crossfield?—I have known him about four years.

Have you known him intimately?—Yes.

What is your opinion of his character?—I never knew any thing against his character.

Do you know whether he is a humane good-natured man?—I have always understood so, and always heard so.

Mr. *Wyld* sworn.—Examined by Mr. *Adam*.

Do you know Mr. Crossfield?—Yes.

How long have you known him?—About three years.

What is your opinion of his character?—I always thought him of a good character.

For his good-nature and humanity?—Yes; I always thought him a man of humanity.

What is your profession?—A surgeon.

Where do you live?—In the Kent Road.

Mr. *Simon Wilson* sworn.—Examined by Mr. *Adam*.

What are you?—A surveyor in Dorset-street.

Do you know Mr. Crossfield?—Very well.

How long have you known him?—Ever since I remember any thing.

Do you know him sufficiently to know his character?—Yes.

What is your opinion of his character?—I always thought him an exceeding good man.

Incapable of committing any crime?—I never thought he would commit the least crime.

He is a humane man?—Very much so.

Mr. *Hepburn* sworn.—Examined by Mr. *Adam*.

What are you?—A surgeon.

Where do you live?—In Great Hermitage-street.

How long have you known Mr. Crossfield?—Four years.

Have you known him intimately?—I have been often in his company, I attended the family where he lodged.

What is your opinion of his character?—A very easy good-natured man, extremely so; too good-natured.

Mr. *Law*.—We will call Dennis and Le Bretton again.

Thomas Dennis called again.—Examined by Mr. *Law*.

Were you in court while Mrs. Smith was being examined just now?—I was not.

You have not heard what she said?—No.

You know Mrs. Smith?—I do.

Have you had any conversation with her about Crossfield?—Not since I was first examined before the privy council.

Did she ever make any enquiries of you as to what you had said on your examination?—She did.

Are you sure of that?—Yes, I am confident of it.

Did she seem in any manner anxious to know what you had said upon that examination?—Quite so; she asked me what I knew about Crossfield, and she said she hoped I would not declare any thing that would hurt him; I dined with her, and very warm disputes there were after dinner; there were three or four captains there and myself; and she said she would say any thing to save him, and not to hurt him.

Was there any thing said about whether you should or not say truth at all times?—Not before me.

Mr. *Adam* to *Elizabeth Smith*.—Is what this man says true?

Mrs. *Smith*.—I never examined him as to what he had said.

Mr. *Adam*.—Did you ever ask him to do what he says you asked him?

Mrs. *Smith*.—I never asked him to favour Mr. Crossfield.

Dennis.—Captain Smith, who dined there, got into a very warm dispute, and said Mrs. Smith, you ought to be ashamed of yourself for saying such a word.

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Mr. *Law*.—Who is that captain Smith?

Dennis.—A gentleman in the African trade; he lodged with this good lady, at least I learned so when I dined there.

Lord Chief Justice *Eyre*.—Who wereth e other gentlemen there at dinner at that time?

Dennis.—Captain Clarke, captain Smith, and a young gentleman that had apartments there, I believe he was a wharfinger; I do not know his name.

Mr. *Law*.—As I find Le Bretton is not here, we will not detain the Court, but with your lordship's leave we will examine him after my learned friend has summed up the evidence for the prisoner.

Mr. *Gurney*.—Gentlemen of the jury; The evidence for the prisoner being now closed, it becomes my duty to address you on his behalf; and I need scarcely state to you the extreme awfulness of that duty. Even my learned friend, Mr. Adam, when he rose to address you, felt himself most deeply affected by the circumstance of standing up, for the first time, in defence of a person accused of so great an offence: what then must be my feelings, who am far from having the advantage either of his ability or of his experience? I, however, feel myself encouraged by the consideration, that the able and eloquent speech which he delivered must have made such an impression upon your minds as to render it less necessary for me to solicit your attention, or to detain you, for any length of time; and to make it less likely that the prisoner should suffer, as I fear he must suffer, by the inability of the advocate who has now the honour to address you.

I confess, gentlemen, there is one burthen, from which in this case I feel relieved, namely, that there is not any question of law by which your minds can by any possibility be entangled. It is purely a question of fact upon which you are to decide; that is to say, whether the fact has been substantiated by legal proof, so as to call upon you to find the prisoner at the bar guilty of high treason.

Gentlemen, it has been correctly stated to you that the crime of high treason is the most heinous and the most atrocious crime which it is in the power of man to commit. It is so inasmuch as it aims not only at human life, but at the life of the sovereign, whose death might plunge the country into a state of anarchy and confusion, and consequently bring upon it incalculable miseries. The life of the king being of such high import to society, the law has provided peculiar protections for his person; it has enacted, that even the compassing his death shall be equal to that which in other cases would be the completion of the crime—the actual murder. By the act of 25 Edward 3rd, which is the statute upon which this indictment is founded, treason is defined to be—"when a man doth compass or imagine the death of our lord

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the king, and thereof be provably attainted of open deed by people of his condition."

Thus far the law had provided, and wisely provided, for the protection of the person of the king from lawless violence; in succeeding times the legislature was taught, by melancholy experience, that another important consideration remained, namely, to protect the person of the subject from unrighteous violence under the forms of law; it therefore provided fences to guard the subject from unfounded accusation of high treason. A subsequent statute has enacted, that a person shall not be convicted of high treason unless there are two witnesses to one overt act, or one witness to one overt act and another witness to another overt act, of the same species of treason. The reason of the law was, that the legislature, in prosecutions for high treason (carried on, as they always are, by the government of the country) had witnessed instances in which individuals were overborne by the power and the influence of that government; it was, therefore, necessary that a jury should have, in a case of so great magnitude as this, the satisfaction arising from the concurring testimony of two witnesses to some one overt act, or one witness to one overt act and another witness to another overt act, of the same species of treason.

Before I state to you, gentlemen, what the question is which you have to consider, give me leave to state, in one word, what it is you have *not* to consider. The question is *not* whether there was or was not probable ground for this prosecution. The question is, *whether the attorney-general has substantiated the charge of high treason, according to the strict requisites of the law.* This statement of the question you will perceive the necessity of keeping in your minds, from some observations I shall have occasion to make hereafter.

Before I enter upon the examination of the evidence which has been given, I would beg leave to remark on the improbable nature of the case attempted to be made out on the part of the crown. It is surely no immaterial consideration, whether the charge which is brought against the prisoner is attended with probability or with improbability; because, undoubtedly, evidence of a less weighty nature will substantiate a probable charge than will substantiate an improbable charge. Now, upon viewing the whole of this case together, I will venture to say, that, from the beginning to the end, it is attended with every improbability that can attend any account of any human transaction, or any pretended human transaction. Among other things, let it be considered, what motive all these persons could have who are affirmed in the indictment to be conspirators. In former assassination-plots, which have become the subjects of judicial inquiries, there was in a neighbouring kingdom a competitor to the throne, ready to assert his pretensions by force of arms; and there were in this country

numerous adherents to the dethroned prince, ready to second and to support his pretensions; therefore, there was a very obvious purpose to be attained by the persons who were conspiring to assassinate the reigning king, namely, to remove him, in order to place the exiled monarch upon the throne.—Happily for this country, that is no longer the case. We have now no disputed throne, his majesty reigns by unquestionable right, and reigns, too, in the hearts of his subjects.

Gentlemen, there is another observation upon the improbability of the charge which may not be unworthy your attention.—It is said this assassination was to have been effected in the theatre at Covent-garden. Is it at all conceivable that any persons could perpetrate a crime so horrid in that public place without necessarily becoming the victims of their own guilt? Is it reasonable to suppose, that any persons could be so mad as to imagine that they could perpetrate that crime and escape the punishment which they so well deserved? It is totally impossible they could entertain such a hope. You will, therefore, consider how strong and powerful a motive ought to be proved upon persons who are asserted to have engaged in a design, the execution of which must have been attended with the immediate loss of their own lives.

I will now, gentlemen, submit some observations to you upon the evidence; and I feel relieved from a great part of the duty that would otherwise have been incumbent upon me, by the observations which have been already so forcibly made by my learned leader; and, therefore, if in going over the evidence for the crown I should not state it to you with great particularity, that will be the reason; and you will not, therefore, imagine that I have any wish to withdraw any part of it from your attention: indeed, if I had any such wish, I know it would be vain, because I am to be followed by the learned attorney-general in reply. The learned judge, too, who presides, will sum up all the evidence to you with the greatest accuracy.

In the first place, you have the evidence of Dowding, Flint, and Bland, who state the conversations that passed between them and a person of the name of Upton, of whom you have heard so much, Palmer, whom you have seen, and some third person. Not one of these witnesses, however, has identified the prisoner to be that third person. You will observe, farther, that, in all these conversations, Mr. Upton is stated to be the person who made the inquiries; Mr. Upton is the person who is supposed to have carried on something like a negotiation with each of them; though, in point of fact, nothing was done upon any of these inquiries, no instrument was made; and, till you come to the evidence of Hill, it is not stated that any thing was done in consequence of these inquiries and these directions.

You come then to the evidence of Mr. Hill, who states, that three persons came to him, Upton, Palmer, and a third person; which third person, he, too, has not identified to be Mr. Crossfield that he received instructions from Upton; and that that third person, whoever he was, he thinks assisted Upton in giving the directions.

Then you have the evidence of Mr. Palmer, which is to connect Mr. Crossfield with the whole of this transaction. Mr. Palmer states, that himself, Upton and Mr. Crossfield, were the persons who called at these brass-founders, and were the persons who likewise called upon Mr. Hill.

You will recollect, gentlemen, that Mr. Palmer was a witness produced by the crown; he was a man, therefore, whom the crown tendered to you as deserving of your credit; for if he was not deserving of your credit, he was not a witness to be produced by them in this court. You will recollect that the identity of Mr. Crossfield is proved only by Mr. Palmer, and therefore I should suppose that the crown will not state to you that Mr. Palmer is not deserving of your credit, because the moment his credit is destroyed this cause is out of court; for they have not proved the identity of Mr. Crossfield by any person but Palmer. Therefore, I am perfectly indifferent as to Palmer's credit; I care not whether he stands before you as a man entitled to the fullest credit, or as a man totally unworthy of your belief. I am perfectly indifferent upon that subject; because if he is deserving of credit, then the whole of his evidence must be taken to be true. And he has stated, that the calling upon Upton was accidental; he has stated, that he called upon Upton for a watch of his, which Upton was mending; that upon mentioning to Upton which way Mr. Crossfield and he were going, Upton said he was going the same way, and would accompany them; that Upton was the man who spoke to every person upon whom they called: he has not the least memory of any one part that either of them took in the conversations except Upton; and, therefore, if Palmer is a person of credit, then one of those persons who is supposed to be a witness to prove some one of the overt acts charged in the indictment, is a witness who does not prove any one of those overt acts.

You recollect how this is supported, on the other hand, by Hill, if it is to be called support. Hill states, that he received instructions from Upton; and he thinks that a third person, whom he did not know, assisted in giving some part of the directions. Is this to be called two witnesses to an overt act?—Is this that concurring testimony of two witnesses to an overt act which the law requires before a prisoner can be provably attainted of open deed? It certainly is not. One witness proves something like a fact, which fact the crown attempt to colour by subsequent evidence, and the other witness fixes identity

but proves no facts; and if this overt act is not proved, I beg to ask what overt act upon this indictment is proved? Not one. This is the only overt act to which the evidence for the crown can be applied.

The first overt act charged in the indictment is, that the prisoner, together with Le Maitre, Smith, and Higgins, the other persons named in the indictment, conspired to procure and provide a certain instrument, for the purpose of discharging an arrow, and also a certain arrow to be loaded with poison, with intent to discharge the said arrow so loaded with poison, by means of the said instrument, at and against the person of the king, and thereby to kill him. Now, you cannot but have observed, that, although this is the main and principal overt act—although it is that which first presents itself to the eye upon reading the indictment, yet the crown have not affected to give a single tittle of evidence in support of it from the beginning to the end of their case.

Gentlemen, you must have supposed, from hearing the indictment read, that you were to have evidence of a conspiracy of the prisoner with those other persons to procure and to provide this instrument; and yet you have heard no more of those persons upon the evidence for the crown than if they had never existed from the beginning of time to the present moment. The first overt act, therefore, is not even attempted to be proved by the crown.

The second is the overt act upon which I have already observed, and to which alone the evidence for the crown applies; that is the employing Hill to prepare two pieces of wood, to be used as models for the making certain parts of the instrument before mentioned, and delivering to Hill drawings, as instructions for making such models.

The third overt act charges the prisoner, together with the other three, with deliberating on the killing of the king, by the means and instrument aforesaid, and how and where it might most effectually be accomplished. Of that, too, you have not heard one single syllable in evidence.

The fourth is, employing Upton to assist in making the instrument; and for that purpose delivering to him a paper with drawings, as instructions for making the instrument, and also two pieces of wood as models for the instrument.

Gentlemen, as you have not seen Mr. Upton—from what cause it is not now my business to inquire—but as, in point of fact, you have not seen Mr. Upton, you have had no evidence given, or affected to be given, either of the prisoner at the bar or of the other persons who stand charged with him in the indictment having employed Upton for that purpose, or having delivered to him any drawings for that purpose.

There remains, then, only another overt act, which is, delivering to Upton a metal tube, to be used by him in the making of the

instrument, and as a part of the instrument.

Now, gentlemen, what proof have you of that overt act? All the proof you have is, that, in the possession of Upton, a metal tube, which has been produced, was found. Unquestionably the metal tube was in the possession of Upton. But after the evidence you have heard respecting Upton—after the evidence, too, which you have not heard respecting Upton, I mean, because you have not seen or heard Mr. Upton himself—is it to be inferred, that, because a metal tube was in his possession, that, therefore, the prisoner delivered that metal tube to him to be employed for that purpose? I am sure a presumption so violent, so totally unsupported by all the evidence, is not a presumption that can be seriously and gravely stated to you on the part of the crown.

There is another set of overt acts, which differs from this only in the description of the instrument; I shall not detain you, therefore, with any observations upon them.

I believe it is unnecessary for me to make more than one or two observations farther upon that which is the original evidence in support of this indictment. You must have anticipated me in observing, that it was not so very remarkable that Mr. Upton should be going to a brass-founder's, or that he should be going to a turner's, for the purpose of ordering any instrument to be constructed which was not in his ordinary business as a watch-maker, because it has been proved that he was, likewise, an ingenious mechanic in other branches; that he had in his shop an electrical machine of a curious construction, of his own invention, that he was extremely proud of it, and you observe when he was asked by Hill the purpose for which the models were wanted by him, he said they were for the purpose of an electrical apparatus.

Leaving then, gentlemen, all that evidence which merely states certain circumstances respecting Mr. Crossfield calling with Upton upon Hill, and those circumstances proved, as I submit, only by one witness (because not one of the other witnesses, excepting Palmer, speaks to the identity of Mr. Crossfield), unless there was something more in the case, it would unquestionably be impossible for you to conceive by what means that evidence could be applied to the support of the indictment upon which you have to decide.

But the crown state that they can give corroborative evidence—evidence of conversations or of confessions of Mr. Crossfield which completely prove the traitorous purpose with which he did those acts. Now, evidence which is corroborative, or in other words evidence which is auxiliary, can only weigh in your minds so much as to produce a conviction, when there has been previously some one overt act established according to the requisites of the act of parliament by two witnesses; or two overt acts, one proved by one

witness, and another proved by another. The superstructure cannot be raised until the foundation for it is laid.

Gentlemen, of all evidence that is produced in a court of justice, evidence of confessions, of conversations, of words, is the most loose and the most suspicious. I am sure the observations which my learned friend made to you upon that subject, and the very respectable authorities which he cited cannot fail to have made the strongest impression upon your mind. In addition to them, I will quote but one authority, and that is Mr. Justice Blackstone, who says, "Words may be spoken in heat without any intention, or be mistaken, perverted or misremembered by the hearers. Their meaning depends always upon their connexion with other words and things. They may signify differently even according to the tone of voice with which they are delivered; and sometimes silence itself is more expressive than any discourse." I will not add one word of my own to this admirable observation of that learned, that judicious, and that elegant writer upon the English law.

Gentlemen, you have the testimony of persons who were on board the prison-ships with Mr. Crossfield, who come to you to state, that he made certain declarations upon the subject-matter of the crime with which he now stands charged. Here, too, the case is attended with some of the strongest improbabilities that can exist, and with some circumstances extremely hostile to that case, which is attempted to be made out by the witnesses on the part of the crown.

The first witness that you heard was Le Bretton, who stated himself to be boat steersman, which, as I understand, is a situation of very inferior condition on board a ship, certainly such a man is not a suitable companion for the captain and the officers, or the surgeon. Le Bretton has stated to you the words which Mr. Crossfield is supposed to have uttered, and which are conceived to prove the criminal purpose with which he did the acts that have been before alluded to. Le Bretton says, I have heard him say he was one of those that invented the air-gun to assassinate, which he called *assignate*—to shoot his majesty. I asked him, what it was like; he told me the arrow was to go through a kind of a tube by the force of inflammable air, he described the arrow to be like to one of our harpoons.

Now I should have supposed when the next witness Dennis was called, that he was to have proved the same declaration as Le Bretton, and most undoubtedly it was conceived he would prove the same. Dennis was more Le Bretton's associate than any other person. He was mate of the ship in which Le Bretton was a sailor, and consequently he and Le Bretton must more frequently have associated, and were more likely than any others to be in company together with Mr. Crossfield.

Here, gentlemen, you have a fact which marks the danger of giving so much credit as is sought to be given to this testimony, because you must see that not two of those witnesses speak to the same declaration; Dennis tells you he heard Mr. Crossfield say, that his majesty was to be assassinated at the play-house by a dart blown through a tube, and that he knew how the dart was constructed; it was something of the shape of a harpoon.

Then we come to Mr. Winter, and really after the very acute cross-examination of my friend last night, and after the observations which he made upon his evidence this morning, I am almost ashamed of re-calling your attention to his testimony, except to remark that this, too, conspires, as every thing does conspire, to prove the extreme danger of admitting this sort of evidence as a proof of guilt. What does Mr. Winter say? He says that Mr. Crossfield told him, he actually had shot at his majesty, but unluckily missed him; he said this was between the Palace and Buckingham-house; that this was Crossfield's daily subject of discourse for five months, and that he once dipped his finger into some grog and marked upon the table how the arrows were made. Then there are some other declarations respecting what he hoped would happen in future.

Lastly comes Mr. Penny, and he states, that Mr. Crossfield said he was one of the ring-leaders of the three that attempted to blow the dart at his majesty in Covent-garden theatre—stating the attempt to have been actually made, of which you have had no proof, and which there is no pretence to say ever had been made—and that if he arrived in England he would do the same again.

Although it does not come exactly in its place, I must remark the extreme absurdity of supposing that a person who is imagined to have confessed to this witness that he had actually committed the crime of high treason, should say that if he ever came to England again, he would do—what? Not that he would commit any other species of high treason—not even that he would commit the same species of high treason in any other way—but that he would commit high treason again in the particular way in which he is supposed to have committed high treason before, when all the parties were in custody, when the whole scheme was known to the public, and which, therefore, was the last scheme that ever would have been thought of by any man in his senses, even if he had entertained those detestable designs.

But, gentlemen, some observations arise upon the manner in which these witnesses have given their evidence, and upon the sort of intimacy which they must have had with Mr. Crossfield. Le Bretton, I am sure, must have impressed you by the manner in which he gave his evidence, with an idea of his not being very favourable to Mr. Crossfield. Le Bretton states, that in point of fact, Mr. Cross-

field and he did not associate on board the prison-ship; that he was in one mess, and Mr. Crossfield in another, as must certainly have been the fact, considering the disparity of their conditions. He owns that he disliked Mr. Crossfield, and it is extremely fair to suppose that that dislike was mutual. Yet it is to be imagined that of all the persons in that prison-ship, Le Bretton, a man of inferior condition, disliking him and disliked by him, was the man whom he should select as his confidant, with whom he should entrust his life, to whom he should actually confess, that he had been guilty of high treason in attempting to kill the king!

Then you come to Dennis; he was the mate of the ship, and he did associate with Mr. Crossfield, because he was in the same mess; but when I asked him as to his intimacy with Mr. Crossfield, he said he never to his knowledge exchanged fifty words with him all the time he was in France, and not many more than fifty before he arrived there. He too appears not to have been very favourably disposed towards Mr. Crossfield, and I think it may be reasonably inferred that Mr. Crossfield was not in habits of the greatest degree of sociability and intimacy with him. Yet it is supposed that Mr. Crossfield has such a strange taste for confidants, that he first of all selects a common sailor with whom he did not associate, and whom he did not like; and next a mate whom he disliked so much that, although Mr. Crossfield is confessedly a man of levity, of rattle, and extremely talkative, he did not exchange fifty words with him in a six months captivity, during which they messed together every day.

Now I appeal to you, gentlemen, whether it is possible to conceive of any evidence more improbable than that which has been given by Le Bretton and Dennis, who speak to declarations which could have been inspired only by the greatest intimacy and confidence, and which by their evidence would appear to have existed, where there was every thing the most remote either from intimacy or confidence.

Mr. Crossfield was afterwards removed on board another ship, and there he finds Mr. Winter. Mr. Winter, you perceive, is a man rather stricken in years, and I think even upon his own evidence in chief, he must have appeared to you to be a man of as weak an understanding as ever made his appearance in a court of justice. What does he state? He states that Mr. Crossfield said, that he actually had committed the crime,—not that he had conspired to commit it,—not that he was concerned with others in any plot to commit the crime,—but that he had actually committed an overt act of high treason in shooting at the king. That is not either of the overt acts charged upon this indictment. The crown did not think proper to state that as an overt act, because unquestionably it never did exist.

But what shall we say to Winter, when it appears upon his cross-examination, that from his silliness and credulity, he was the butt, the ridicule of every person in the ship, and that they were perpetually telling foolish stories to him in reply to his very foolish stories to them? A more striking instance of the complete credulity of the human mind, of a mind which must be as near dotage as it is possible for any mind to be (if it is not absolutely in a state of dotage), is the story he told last night respecting the hare, which, he says, jumped into his arms, which hare he threw into a kennel of hounds, and there that hare remained, like Daniel in the lion's den, unhurt for several hours. Is it possible to listen to any thing that a man says, whose mind can be so extremely weak as to allow of his telling that as a fact, which no man living could believe if it were stated by a thousand witnesses—that a hare could be thrown into a kennel of hounds, and that the dogs, after permitting it to remain among them unhurt for many hours, should then take into their heads to chase it. Winter was asked a question which naturally arose from that—Whether he had not represented this hare to be the devil in the shape of a hare? No, he is positive he never said that. I think the probability of the case would have been, even if we had had no evidence to prove the fact, that where a man was so weak as to believe it possible for a hare to remain unhurt in a kennel of dogs for several hours, he would be superstitious enough to suppose the hare was something supernatural. But it does not rest upon that which is the probability of the case; because we have it from the evidence of captain Collins, that he did state this hare to be the devil in the shape of a hare, and therefore what Winter states of his not having said so, is completely and absolutely false.

Then, gentlemen, we come to the evidence of Penny, and his evidence of declaration varies, as I have before observed, from all the declarations affected to be proved by the other witnesses. He states the act too to have been really done, which this indictment charges Mr. Crossfield with having conspired to do; he says Mr. Crossfield told him, he was one of the ringleaders of the three that attempted to blow a dart at his majesty at Covent-garden, and he would do the like again if he had an opportunity.

Something is to be gathered, as I before observed, from the demeanor of witnesses. You may collect something of the truth of their evidence from the circumstances of their appearing to come well or ill disposed to the person against whom they speak. And I think I may appeal to you respecting the demeanor of Penny, that he did not come with any very favourable or even with an impartial disposition towards Mr. Crossfield. After I had cross-examined him, and not at any great length, he brought out with great eagerness, "He said all this and more."—He was asked

directly what this *more* was. It did not appear to be coming very quickly, and therefore I sat down to wait for it. After some pause, his lordship asked what it was? No answer—Another pause—his lordship asked him, if he heard his question—"Yes"—but still no answer. Again and again was his lordship obliged to remind him that he was waiting for an answer—and then what was this more? Nothing additional could he venture to state—but he then says, your lordship has got this down, and that down, and the other, repeating every thing he had said before, in the very same words he had before used, and in the same order, but not pretending that he had any thing new to state, though he had before said he had something more to state: and the whole of his behaviour created a suspicion, that he was endeavouring to invent something to extricate himself from the difficulty in which his zeal had involved him.

Gentlemen, I have observed upon the variances in the accounts given by these witnesses, of the declarations of Mr. Crossfield; and that naturally introduces the observation which I am now to submit to you, that inasmuch as I have before, I think, demonstrated, that you have not had any overt act proved by two witnesses, as the statute requires—so, on the other hand, you have not any confession of an overt act proved by two witnesses; because Le Bretton is the only man who has stated to you, that Mr. Crossfield confessed to him he was one of those that invented the air-gun to shoot his majesty. Therefore to fortify that which, I think, is not established sufficiently to be fortified, you have merely the single evidence of Le Bretton, as to the confessions of Mr. Crossfield. But this, you will recollect, is not a confession of any one of the overt acts proved, or attempted to be proved. You have no overt act proved of a conspiracy for the purpose of killing his majesty. There has not been a single tittle of evidence produced by the crown to establish that charge of conspiracy, and yet every one of the supposed confessions of Mr. Crossfield; relates to some supposed conspiracy, of which the crown has not been able to produce a single tittle of evidence. Therefore you will consider how remote all these conversations of Mr. Crossfield are from proving, that he confessed to these witnesses that he was guilty of any one of the overt acts which is charged upon this record, I mean of any one of these overt acts upon which the crown have offered any evidence to your consideration.

Gentlemen, this being the evidence on the part of the crown, the attorney-general said, that he thought it would behove the prisoner to give some account of the instrument in question, and of the design with which it was made, and this he considered to be a necessary part of our defence.

Gentlemen, the crown is to make out its

case by its own strength, not by the weakness of a prisoner. A prisoner has a right to stand upon the defensive, and to say, I do not come here to prove my innocence, it is for you to prove my guilt—and evidence to prove that guilt must be produced before he can be called upon to make any defence at all. But even when a prisoner is called upon to give some evidence in his defence, the nature of that evidence must depend upon the nature of the case which is attempted to be made out against him, and he is not to be called upon to give evidence, which in the nature of things it is not in his power to give.

Admitting the whole of the evidence that has been given on the part of the crown to be true, and drawing from it every inference that the crown would wish to draw, the knowledge of the existence of these models is only proved to have been in the prisoner, in Palmer, in Upton, and in Hill. Hill you have seen, Palmer you have seen, Upton you have not seen—and, therefore, I should be glad to know what witness I am to produce upon the subject.—Am I to produce Mr. Upton? The crown state that he is dead, and, therefore, they cannot call upon us to produce him. I beg to ask, then, how Mr. Crossfield is to be called upon to give any account of the nature of this instrument, when it is not pretended that there is any other living witness who ever saw it.

But recollect, gentlemen, what it is that Mr. Crossfield is supposed to have seen. It is not affected to be said he ever saw any part of the instrument. For you will recollect, that in the conversation at Hill's, at which Palmer states Mr. Crossfield to be present, Upton was giving instructions for making the model, Palmer never saw that model, and Hill is the only witness produced who ever saw it, excepting afterwards in the possession of Upton, when Mr. Ward saw it.

With respect to the metal tube, that which is infinitely the most formidable part of the instrument, that too which might perhaps readily explain the meaning of all the rest, that without which all the rest is unintelligible (for I defy you to collect from the rest any supposition that any person, unless he were skilful in that line, could conclude that it was for an air-gun), that that metal tube is not proved to have been in the possession of any person but Upton, Mr. Crossfield never saw it, never heard of it till afterwards; and, therefore, what evidence can be give of its purpose and intent? You will not forget, gentlemen, that I am stating this hypothetically, giving the case for the crown all the weight which can be affected to be given to it by themselves, and not allowing, because it is not proved, that Mr. Crossfield had the least knowledge that the wooden model was for the purpose of an air-gun, or that he had any thing to do with ordering it, farther than possibly giving Upton a little assistance in explaining his directions.

Is was in the power of the crown, if the fact had existed to have proved that Mr. Crossfield knew something more of the instrument, because they have called Mrs. Upton, who states that she had seen Mr. Crossfield at her husband's house; but she does not venture to state that when Mr. Crossfield was at the house, he saw either the drawing, the models, or the brass tube; and you will recollect (for it is a thing never to be forgotten in the course of this cause) that that brass tube is only spoken to, as having been in the possession of Upton, and that there is not one single tittle of evidence that any one person, excepting those who have been produced to you, ever saw it, and these persons only saw it in the possession of Upton. Palmer never saw it, Hill never saw it, no person ever did see it, except Pusey and Steers, and afterwards Mr. Ward, when Upton disclosed this supposed plot to him.

With respect to the evidence we have produced, you will observe, that we have produced evidence not immediately respecting Mr. Crossfield personally, but which will in some measure account to you for the charge, which Upton brought against Le Maitre, Smith, and Higgins, who were the persons first apprehended. We have proved most indisputably, that those persons were pursuing an enquiry against him in the Corresponding Society, for a charge of a most atrocious nature: that they were pursuing it with some degree of violence, and that he was resisting it with every possible degree of violence and rancour. We have likewise proved to you declarations, that but for their exposing him he never would have made that charge against them.

Now let us look at this indictment; what does this indictment import to be? a charge upon the prisoner and Smith, Higgins, and Le Maitre, of a conspiracy to kill the king, and Upton is supposed to be the instrument. The attorney-general stated in his opening, that Upton, if he had come into court must have come here to state himself an accomplice in the crime of high treason, and that he was one of the principal conspirators.

Do I not then establish still farther the extreme improbability of this charge as it stands upon the indictment, that Upton should have been supposed to have been in actual conspiracy with men, who at that very time were pursuing an enquiry against him in the Corresponding Society, were endeavouring to procure his expulsion from that society on account of the infamy of his character, and respecting whom he made declarations which manifest his enmity and rancour? Is it to be supposed that persons enter into conspiracies for crimes with those with whom they are on terms of hostility? The supposition is most wild and extravagant.

You will also recollect the evidence of Mr. Palmer, as to the degree of acquaintance

which Mr. Crossfield had with Upton, that the acquaintance was of very short duration, that it commenced with meeting in the Corresponding Society, and that the call upon the occasion, which is the subject of the evidence, was purely accidental. Why, gentlemen, good men do not associate for good purposes without knowing something of each other, without having some general knowledge of the character which each of them bears. Bad men do not conspire to commit crimes without that degree of intimacy, friendship, and confidence which shall enable each to believe that when he trusts his character or his life in the power of the other, he trusts it in the power of a man who will not betray him. A man surely will not offer to engage with another in a conspiracy, to commit the greatest and most atrocious crime that can possibly be committed, without a considerable degree of knowledge of him, and confidence in him: because for aught he knows, the moment after he has disclosed his purpose to him, that man would go, as it was his duty, and inform the secretary of state of the transaction, and in an hour's time, he might find himself a prisoner in the Tower for high treason. Here is then another of the strong improbabilities with which the whole of the case of the crown is encompassed. It is supposed that Mr. Crossfield entered into a traitorous conspiracy with Upton, upon a short acquaintance, upon little knowledge, and therefore when he was not in a situation to bestow upon him that confidence which was absolutely necessary to the guilty transaction imputed to him by this indictment.

But it is supposed that Mr. Crossfield must be a guilty man, because after Le Maitre, Smith and Higgins were apprehended, he left London with Mr. Palmer, and went to Bristol. If Mr. Crossfield was one of the persons charged in this conspiracy by Upton, why was he not apprehended at the time Smith, Higgins, and Le Maitre were apprehended? It is not affected to be said, that Mr. Crossfield had left London, till after not only Upton was apprehended and had given his information, but Smith, Higgins, and Le Maitre were apprehended. You will observe that the information was given by Upton to Mr. Ward, on the 19th of September. You will observe, too (referring to another transaction) that there was a very violent quarrel between him and Le Maitre and Higgins, on the 4th, only eight days preceding. On the 18th of that month Mr. Ward had an interview with Mr. Pitt, and informed him fully of all the charge as it had been made by Upton: eleven days more passed and then Upton was apprehended. He made a full disclosure of this supposed conspiracy; and on the night of the 27th, Le Maitre and Higgins were apprehended; on the 28th, Smith was apprehended, and they were all taken before the privy council.

Now, I beg to ask, when, for the first time,

was it that Mr. Crossfield was supposed to have had a share in this conspiracy? If he was supposed to have had a share in the conspiracy at this time, most unquestionably Mr. Crossfield would have been apprehended when the others were apprehended. He was not then apprehended, although his residence was perfectly well known; but it was not till afterwards, and long long afterwards that Mr. Crossfield was the subject of any charge. If Mr. Crossfield had then been the subject of any charge, and if the crown could not readily have found him, there is an expedient to which they always do resort, and afterwards did resort, namely, a proclamation, with a reward for his apprehension. The proclamation offering a reward of two hundred pounds for the apprehension of Mr. Crossfield, I have no doubt, Mr. Attorney General will admit was not issued till the 27th of February, 1795.

Mr. Attorney General.—I admit that the proclamation was not issued earlier than my learned friend has stated.

Mr. Gurney.—It is candidly admitted by the attorney-general, that the proclamation offering two hundred pounds reward for the apprehension of Mr. Crossfield, was never issued till the 27th of February, 1795, near five months after the charge was brought against the others and they were apprehended; therefore, I ask again, when was it that he was for the first time charged with this conspiracy? That he was not charged with it at the time the others were is plain, because he would have been apprehended with them; that he was not charged with it till long afterwards is plain, because it was not till long after that the crown resorted to—that which is their never failing expedient—publishing a proclamation, offering a reward for his apprehension.

Palmer has proved that Mr. Crossfield's journey to Bristol, was not then for the first time proposed, that he had for some months had an intention of going to Bristol, for the purpose of trying experiments upon the waters, and seeing whether it was an eligible situation to settle in. But putting it for a moment upon the supposition that Mr. Crossfield had retired to Bristol, upon the account of this charge, I do protest against its being considered as evidence of guilt that a man has not strength of nerves to meet a charge of high treason, more especially if you recur to the time when this transaction took place.

My learned friend has stated that just previous to this, there had been two convictions for high treason in Scotland, that a special commission had issued for the trial of persons then in the Tower, accused of high treason in England. There was at that time a prosecution coming forward for high treason, I will venture to say the most tremendous in the history of this country; a prosecution not merely supported by the usual power, wealth, and influence of the crown, but in which the whole legislature had combined to prosecute;

where, as was most forcibly said by one* of the great advocates for the prisoners, the two Houses of parliament had made up the briefs of the counsel for the crown; where, above all, there was a prejudice, upon the subject so deeply rooted, and so widely spread, that it was scarcely possible to find a man who was not tainted and corrupted with it. I have too the evidence of that which is notorious to all mankind, that some of the persons accused of that treason, whom I have a right to call innocent persons, did not surrender to take their trials upon that indictment. One of the gentlemen charged who was at large, Mr. Holcroft, did surrender immediately. Wardle, Hodgson, and Moore, never did surrender to take their trials, and the prosecution afterwards ceased without their coming into court. Therefore it is not to be presumed that a man's retiring from a charge of high treason, or not putting himself forward to meet it at so critical a time as that when this transaction took place, furnishes conclusive evidence of a consciousness of guilt in his mind. This I say upon the supposition of your not giving full credit to Palmer. But, gentlemen, Mr. Crossfield is stated to have returned from Bristol, in the month of December, and here we have accounted for him completely, by the evidence of Mrs. Smith, because we have shown that he lodged at her house, and did not leave her lodging to go on board the *Pomona*, till the latter end of January. Then he comes on board the *Pomona*, and you have the evidence of those persons, who had been called on the part of the crown, to prove his declarations.

Gentlemen, there is one observation I omitted to make, and it is scarcely necessary for me to recur to it, because it was forcibly impressed upon you by my learned friend, on the evidence of a fact in contradiction to some of those declarations the witnesses have spoken to.

Mr. Crossfield is supposed to have said, that he was rejoiced at going on board a French ship, for he would rather go to France, than return to England. And yet he was a man so strangely formed as to be averse to happiness when it was in his power to procure it, for he most readily entered into a conspiracy to rise upon the French, to seize upon their ship, and return to England. Gentlemen, evidence of a fact like that, where he was risking his own life in a very unequal contest, for the purpose of rescuing the ship, is enough to set at nought a thousand such declarations as those which have been spoken to of his joy at escaping from England, and a prospect of getting into France.

Then, gentlemen, we have called to you persons who were confined on board the prison ship with Mr. Crossfield. And here I must not fail to observe on the deficiency of

the case proved on the part of the crown. The witnesses who have been called have stated the names of a number of persons, who were in the daily and hourly habit of associating with Mr. Crossfield—they have stated, that they gave those names to the privy council, or at least to some of the agents of the crown; and, therefore, the crown had it in their power to have procured the attendance of them all, because they all of them came home in the cartel with Mr. Crossfield. You will recollect that Mr. Crossfield and those persons came over in the cartel the latter end of August, or the beginning of September, and this indictment never was preferred till the month of January. Mr. Crossfield was all that time a close prisoner in the Tower, having no intercourse with his friends, and consequently very little, or indeed, not at all able to make any preparation for his defence. It was in the power of the crown to have given you the satisfaction of hearing the testimony of all these persons, with whom he was in habits of real intimacy and friendship, to whom, therefore, if he had made any such declarations as these, he would have been most likely to have made them.

Upon this part of the case we have produced some evidence, but here, too, we could only give you such evidence as it was in our power to produce; and surely we have a right to infer, that if all the persons had been called who were constantly in Mr. Crossfield's company on board the prison-ships, they would not have confirmed the evidence which has been given on the part of the crown, otherwise you would undoubtedly have heard them.

Above all, the most material witness is captain Clarke, who engaged Mr. Crossfield as his surgeon—captain Clarke, with whom he constantly lived—captain Clarke, who, you will not forget, had some conversation with Le Bretton upon this subject; for Le Bretton stated that he had some conversation with him, that he had informed the crown of captain Clarke, that captain Clarke had undergone some sort of examination, and that he had seen him at the office of Mr. White, the solicitor for the Treasury. Why is not captain Clarke brought here? It is said he left this country about Christmas last. The crown knew the case which they had to prove against Mr. Crossfield, and undoubtedly it was in their power to have detained captain Clarke in this country to have given his evidence, if his evidence would have tended in the least to support this prosecution.

Gentlemen, we have done all that is in our power to do; we have, with great anxiety and with great diligence, sought those witnesses who were in the company of Mr. Crossfield at this time; and we have brought to you, first, Mr. Cleverton, who was taken in another ship a few days after the capture of the *Pomona*; and he has stated to you, that

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* Mr. Erskine: see the trial of John Horne Tooke, *ante*, Vol. 25, p. 259.

he was in the habit of associating with Mr. Crossfield constantly—that he messed at the same table with him—and that he never heard him make any declaration of disaffection to the king, or any confession of ever having engaged in any treasonable conspiracy. If Mr. Crossfield had been in the habit of doing this (which it is the object of the witnesses on the part of the crown to prove), it is utterly impossible but Mr. Cleverton must have heard it. If Mr. Crossfield could make confidants of persons with whom he associated but little, and with whom he was not upon any friendly terms, surely he would not have been more reserved to those persons with whom he associated much, and with whom he was upon friendly terms.

Mr. Cleverton is asked whether he heard Mr. Crossfield sing a republican song,—“Yea, he heard him sing a republican song,” the song is produced, and it is read to you. In the first place, the singing a song (which, by-the-by, Mr. Cleverton says he never heard him sing more than once or twice) I take to be no sort of adoption of the principles which the song contains, even if the man who sings it is sober; but you will not forget that, in order to drown the sorrows of their captivity, they all indulged themselves pretty freely in the use of grog, and Mr. Crossfield especially, for he is stated to have been at that time in the habit of constant intoxication, which must weaken, if not completely destroy, the effect of all the declarations that have been spoken to on the part of the crown. But how does it destroy all the effect which is sought to be given to singing a song—singing a song, too, after supper, by a person in the habit of intoxication, just at the very time when that intoxication must necessarily have existed? But if Mr. Crossfield was so incautious as to make declarations of this sort to Dennis and Le Bretton, and so incautious as to sing a song of this description, before Mr. Cleverton, would he have been more cautious upon the subject of these declarations in the presence of Mr. Cleverton? Would not Mr. Cleverton, or the other persons with whom he was in the habit of associating, be the persons to whom he would have made this sort of declarations?—and would not Mr. Cleverton, therefore, have proved that he heard them?

Another circumstance spoken to by Mr. Cleverton was this, that any of the prisoners upon slight illness, and almost upon the pretence of an illness, might have gone to Landerneau hospital; that several persons went upon slight illness there, shortly before the sailing of the cartel, and in consequence of that they did not sail in the cartel for England. Therefore, if the crown wished to establish (that which I think has been before disproved), that Mr. Crossfield had an anxious wish to avoid England, and to reside in France, surely this is weighty evidence to prove that Mr. Crossfield might have avoided returning to England, and that he might have remained in France if he had chosen to remain there.

Then, gentlemen, you have the evidence of captain Collins, who was on board the same ship with Winter; and he states, that he invited Mr. Crossfield on board his ship for the purpose of his medical skill, to be applied to the prisoners who were sick; that that medical skill was applied constantly, and with great effect: and that by means of his skill and humanity the lives of fifty or sixty of the English prisoners were saved. He has also stated (that which is most material for your consideration, as respecting Winter) that Winter was a silly old man, telling foolish stories, and among others, telling that story of the hare, upon which I have before observed; and that they used to tell foolish stories, too, for the purpose of making a joke of him. He says, Winter was their common laughing-stock; and I am sure it is impossible for your minds to have resisted the impression, that Winter was the constant butt of their ridicule, and that in truth it was scarcely possible that any of them could have said a serious word to him.

Captain Collins likewise proves another circumstance, that there was an offer—and an advantageous offer—made to Mr. Crossfield, if he would remain in France, namely, that he should have the superintendence of the hospital at Landerneau; yet such was Mr. Crossfield's reluctance to staying in France, and desire to return to England, that he refused that advantageous offer; and the reason he assigned was, that he wished to return to his native country.

But then we have a circumstance presented to us, on the part of the crown, which is supposed to be a most formidable circumstance; and you are to imagine, that although Mr. Crossfield was now about to return (unwillingly, as the crown pretend—willingly and rejoicingly, as we have proved) to his native country, that he was extremely afraid of having it known that he was so returning, and therefore he assumed the name of Wilson.

Now, gentlemen, you cannot but have observed how completely the evidence for the crown falls short of affording the inference which they wish to draw from it. Mr. Crossfield is stated to have himself inserted his name in the muster-roll as Henry Wilson, and that he was taken on board the Hope. To whom was that muster-roll to be returned?—to the commissary at Brest. Was it to be sent to this country? It is not pretended that it was.

Then you will recollect the evidence of Colmer, one of the constables of Fowey, who stated, that when he inquired for him on board the ship he immediately answered to the name of Crossfield. It is not affected to be stated, that he then made any sort of pretence that his name was Wilson. Therefore, I have the fact most completely with me, that, as far as regarded this country (respecting which, and respecting which alone, he could have had any wish to conceal his name), he

did not endeavour to conceal his name, but answered directly to the name of Crossfield.

But here is another of the improbabilities with which this case is attended. Is it to be supposed, if Mr. Crossfield wished to come into this country, concealing his name, that he could have done it (considering the company in which he came) in a cartel, with a vast number of prisoners with whom he had resided many months in France, and resided with them under the name of Crossfield? He came with some of those persons with whom he certainly was not upon very good terms, as is clearly proved by the demeanor of those witnesses, and by the express declarations of dislike which they have made in court. Is it to be imagined, therefore, that if he was afraid of being apprehended for high treason upon his return into this country, he would be so complete an idiot as to raise additional suspicions to those which they had before conceived?—that he was a person obnoxious to the government of this country, and therefore could not venture to return to this country under his own name?

But I will suppose that a copy of this muster-roll was to be sent to this country; then recollect another fact, which shows how completely the probability is with me in the reason why Mr. Crossfield should insert the name of Wilson in the muster-roll at Brest—Palmer has stated, that at the time when he last saw Mr. Crossfield, all his property had been assigned over for the benefit of his creditors, and that he was then in debt. You know perfectly well, that the names of prisoners coming over in cartels are commonly inserted in the English newspapers; and, therefore, if the name of Crossfield had been inserted in the English newspapers, as returning on board a cartel from France, that was certainly likely to bring upon him some troublesome creditor, and he might have lost that liberty to which he had been so very lately restored. Then I put it to you, whether, taking these facts together, it is not infinitely more probable that the fear of creditors induced Mr. Crossfield to take the name of Wilson at that moment, than that which the crown suggest—the fear of being apprehended for high treason? The reason I assign is still farther enforced by this consideration, that he is supposed to have made declarations of his having been actually guilty of high treason to those persons with whom he came over, and who consequently must have had their suspicions still more excited by his changing his name.

Gentlemen, I have now taken such a brief and imperfect view of the case as I have felt myself able to take, certainly not in the manner in which I could have wished to have done it, because I could have wished to have discharged my duty to the prisoner with infinitely more effect than I have powers to discharge it; but I trust that the observations which I have made to you will not be totally without their effect; and I have the less

anxiety, because I am sure the opening of the prisoner's case by my learned friend Mr. Adam, cannot have failed to have produced the strongest conviction in your minds; and I should have been extremely reluctant to have gone over all the ground which was so ably trodden by him, because I should have risked weakening the impression which I am sure his address to you must have made.

Give me leave, then, gentlemen, in a single word, to recall your attention to the nature of the proof which has been given by the crown in support of this indictment.

There must be two witnesses to an overt act, or one witness to one overt act and another to another. It appears to me, that the evidence for the crown can be supposed to apply to only one of the overt acts in the indictment—To that one, I contend, they have not produced two witnesses; because one witness only speaks to the identity, and another speaks to the transaction; and that witness who speaks to the identity, absolutely excludes all idea of any criminal concern in the transaction; and, indeed, he who does not speak to the identity does not impute to the person who is supposed to be the prisoner any criminal concern in the transaction.

This being the case, I contend, that the defect is not to be cured, and cannot be cured by any auxiliary evidence whatever—that the only witness who has attempted to prove a confession of an overt act is Le Bretton, and that the overt act which Mr. Crossfield is supposed to have confessed to Le Bretton, is not one of those overt acts upon which the crown have offered any evidence.

Therefore, gentlemen, the question is, whether the prisoner stands in that condition that he is to be considered as provably attainted of open deed of compassing and imagining the death of the king according to all the strict requisites which the wisdom of the law of England has provided. I submit to you, that the crown have completely failed in establishing that proof, and that therefore he is intitled to your acquittal.

Gentlemen, you cannot but feel impressed upon your minds on the one hand, the importance of this case to the public, and on the other, the deep and the last importance it is of to the prisoner at the bar. If the prisoner is guilty, and is proved to be so by evidence which at once satisfies the requirements of the law, and completely convinces your minds, unquestionably it imports the public, that by your verdict he should be pronounced to be guilty. But unless the crown have given that proof which does amount to that complete demonstration which the law of England requires, sure I am you will not pronounce the verdict which must shed that man's blood—that verdict which if pronounced, in a few days the awful sentence of the law must be executed upon him. He must be hanged by the neck, but not until he is dead; he must be cut down being yet alive; he must be em-

bowelled, and dismembered. So awful and so dreadful a sentence will awaken in your minds all the caution you can possibly apply to this case, and weighing it with that caution which I am sure you will apply to it, I trust you will pronounce a verdict of NOT GUILTY.

Lord Chief Justice *Eyre*.—Mr. Crossfield you have been heard in your defence by your counsel, you have also a right to be heard in your own person, if you think fit to offer any thing to the jury.

Prisoner.—My lord and gentlemen of the jury, I have nothing to add to what has been already stated by my counsel, except, that however, occasionally, I may have appeared imprudent in words or in actions, I am totally incapable of the atrocious crime laid to my charge? Farther I say not, but rest my case satisfied with my own innocence and the justice of an English jury.

Mr. *Attorney-General*.—As I find Le Bretton is now come, we will, with your lordships permission, ask him a question or two.

John Le Bretton, called again—Examined by Mr. *Law*.

Do you know Mrs. Smith, No. 17, Great Hermitage-street?—By sight.

Where Crossfield lodged?—I do not know that he lodged there.

Do you remember having any conversation with her, in which she made any inquiries about your examination before the privy council?—Yes; I remember she asked me two or three times what I had said.

Are you sure that the conversation began by her asking you, or your voluntarily telling her?—By her asking me.

You are sure of that?—I am certain of it.

Do you remember her saying any thing particular respecting the evidence you might be called upon to give in this place against any person? Was any thing said about the manner in which that evidence should be given, favourably or otherwise?—Before I was subpoenaed she said she hoped I would not say any thing to hurt the prisoner.

Did you say any thing in answer to that?—I told her I should speak the truth if I was called upon; I did not know whether it would hurt him or not.

Was that the whole of what you said?—I believe that is, as near as I can recollect, that I would speak the truth.

Did she make any observation upon that?—Yes; she said "truth is not always to be spoken you know."

Are you sure she said so?—Most certainly I am.

And that she began the inquiry of her own accord, as to the examination before the privy council?—Yes.

Lord Chief Justice *Eyre*.—Mr. Gurney, do you wish to make any observations upon this evidence?

Mr. *Gurney*.—No, my lord; I do not think any observation necessary.

REPLY.

Mr. *Attorney General*.—Gentlemen of the jury;—When I rise to address you in this stage of the business, which you are met to determine upon, I can assure you that there is no man who feels more than I do, an awful sense of the importance of the duty which you have to execute.

Gentlemen, you will permit me to say farther, that if there be a circumstance to which, at this moment, when I am rising with a full conviction in my own mind that I am entitled to ask at your hands, upon the evidence which you have heard, a verdict of guilty,—I say if there be a circumstance, to which I can look with satisfaction at this moment, or to which I can hope to look with satisfaction at any future period of my life, it is this—that the constitution of my country, in the administration of its justice, protects those, whom it is my duty to prosecute, against any error into which I may fall, either in matter of law, or with respect to the conclusion that ought, as to fact, to be drawn from the evidence; by interposing, between my observations and the fate of the prisoner, the advice of the wisdom that presides here, and the conscientious discharge of your duty as a jury, which I am sure the country and the prisoner will receive at your hands.

Gentlemen, I know too well the operations of my own mind, guarding it as much as I can against fall impressions, not to feel that I am unable sufficiently to protect my judgment against the tendency which a prosecutor's view of the case has to mislead it. When I call therefore upon you, on behalf of the country, for a verdict of guilty, it is, and ever will be to me, a most lasting satisfaction, that between the judgment that I form, and the fate of that individual, you are first to receive the advice and direction of those whose duty it is, according to the constitution, to advise and direct you; and you are then to determine whether this prisoner is or is not guilty of this charge.

Gentlemen, I agree to every observation which has been stated to you, with respect to the importance of this case: but this is not a case important only on one side. Gentlemen, the fate of Mr. Crossfield, who stands now before you upon his deliverance, is the fate of a person whose life is undoubtedly precious in the eye of the law, whose life ought to be precious to your consciences, because it is precious in the view of that God who made you and him. You will however recollect also, that you owe a duty to the country, by a verdict according to evidence, to give protection, according to law, to the life of the sovereign, whose life, I may venture to state, is at least as dear to the law of England, as that as any man who is his subject. The subject and the sovereign are entitled to receive from

you the protection of the law : if in this case a verdict of not guilty be due to the person who stands before you, God forbid that any consideration of the importance of the life of the sovereign should induce you to deal out the least injustice to the unfortunate prisoner, who now stands at your bar. But a just verdict the country hath a right to receive at your hands.

Gentlemen, with respect to the law of this case, it appears to me that this case has no difficulty, in matter of law, in it. This is not a case of such treason as is sometimes represented as constructive treason, and by a variety of other names, which occur in the books and in the history of legal proceedings in this country. But it is a case in which no question of difficulty, with respect to the law, can be stated to a jury of the country ; it is the simple case of a direct attack against the life of that person, to compass or imagine whose death, when a measure is taken for that purpose (whether the measure be effectual, or not effectual for the purpose), is treason under the express letter of the law. The questions therefore, which you have to try, I apprehend are these : Did the prisoner do any such act as any of those which are charged in this indictment ? Did he do any such act with the intent charged by this indictment ? Is it proved that he did such act with such intent by competent and sufficient legal evidence ? And this last question, I apprehend, I may state to you as including the sense of the statute of Edward 3rd, when it speaks of the person indicted "being provably attainted of open deed, by people of his own condition." That the fact was done, you must be satisfied before you can convict ; that the fact was done, with the intent charged by the indictment, you must also be satisfied ; if your minds are satisfied on these points, it only remains for you to consider, under the advice which you will receive in matter of law, whether the fact is proved, and the intent is proved, according to the rules of that law, the benefit and protection of which you are bound to dispense to this prisoner.

Gentlemen of the jury, this case has been very ably stated to you on the part of the prisoner ; that statement has consisted partly of general observations upon a general view of the case, and partly of particular remarks upon the particular expressions, and the particular contents and import of the evidence, which has been given by each and every of the witnesses.

Gentlemen, you will give me leave to do now,—what I attempted to do in the outset—to lay out of the case entirely the fact, that there ever did exist such a person as the man whose name you have so often heard, I mean Upton.

Gentlemen, I opened this case to you by stating, as strongly as I could, that if he were here to give his evidence, it must have been most anxiously watched: it appeared

to me, at least, that when a man came, charging himself, out of his own mouth, with an offence the most heinous that can be stated, not merely in a political view, but in a moral view—for this is not a mere political offence, as affecting the king as king, but looking at it with a view to the character of those who admit themselves to be guilty of it, it is as enormous a moral offence as it can enter into the heart of man to endeavour to perpetrate—when such a man came to give evidence, his testimony must be heard with great jealousy. When the witness must have been bound to admit in his testimony that he had, to a certain extent, embarked in a project to murder an individual in the country, I am sure, gentlemen, I shall not withdraw from what I have before stated in the outset, that if you could not find, in the rest of the evidence laid before you, sufficient reason to affect the life of a third person, I should never have asked you for a verdict against the life of a man upon any credit you could give to such a witness alone.

Gentlemen, I lay out of the case also all the evidence, which has been offered to you on the part of the defendant with respect to the malice, with which this man, Upton, has been supposed to act. In the first place, with regard to the present prisoner, sift the evidence from the beginning to the end of it (I beseech you to do so with respect to every particular, in the whole of the evidence, where your minds feel a leaning in favour of the prisoner), I think I may state to you that there is not a single tittle in it that amounts even to evidence, deserving the name of suggestion, or even of insinuation, that Upton ever had any malice whatever against Crossfield, the prisoner. With respect to the other persons, whom he accused, I mean Smith, Le Maitre, and Higgins, it is extremely obvious upon the evidence (for God forbid I should seek to conceal from you any fact that does appear the fair result of the evidence), that between him and some of those persons, if not all of them, there had been a quarrel, which, if you please so to take it, had led to great rancour, and great malice upon his part. One of the witnesses has told you, that with respect to Le Maitre, at least, a reconciliation had taken place. I think I might ask you, supposing this was a question between, not the present prisoner and Upton, but between Le Maitre, Higgins, and Smith, and Upton, if he had been examined as a witness, whether any thing at all conclusive is proved, after it is established that a man brings forward a charge, actuated by a purpose of malice in so doing ? That you are bound as men of conscience to sift a charge, so brought forward, to the bottom ; that you are bound to see that the malice of the man's mind does not mislead him in point of veracity ; that you are bound to suspect that it may mislead him in point of veracity ; that you are bound to be jealous, lest that malice may create in his

mind the prejudices that may lead him to go beyond the truth, when he is charging the person accused, is that, which it is not only my duty to admit, but it would be my duty, in a case which called for it, to press most strongly in favour of the prisoner upon your attention. But, on the other hand, I should neither be speaking the language of the law of England, nor the language of common sense, if I should say that in every case in which a man brings forward a charge, because he has malice in his mind, the charge is false; that it is therefore false, because the person who makes it is malicious. The malice may be his reason for bringing forward the charge, but it will always be a question for a jury to determine whether, supposing the malice to be the motive for his bringing forward the charge, there is or is not evidence of the truth of that charge, which malice leads him to bring forward. Now I beg your attention to the evidence itself, as to this matter: throughout all that has been stated, on the part of the prisoner, with respect to Upton's malice, if it even applied to Mr. Crossfield, which there is no pretence in the world to say that it does, there is not the least admission in all the language which Upton holds upon the subject, that the charge which he had made was not true. He (Upton) has stated a reason, and a very bad reason, undoubtedly, for bringing forward that charge of guilt, in which he himself participated, but he has never stated to any of the witnesses produced, any thing like an admission that the charge itself was not true. The amount of all he said is this: it is true that I have brought forward this charge. I insist upon the truth of the charge. I implicate myself in the guilt. I do not pretend to say there was innocence any where. I assert that there was guilt every where. It may be true that I have a malicious motive for bringing it forward. But, gentlemen, be that as it may, and whether he was or was not reconciled to Le Maitre, whether he was or was not reconciled to Smith and Higgins, whether he was or was not unfriendly to them, or any of them, at the time he brought forward the charge against all the four, there is not one single tittle of evidence, not one from the beginning of this cause to the end of it, which even imputes to him—nay, the tendency of the questions put by my learned friends, in their examinations, and cross-examinations, does not impute to him that he had any malice against the prisoner, against this individual, upon whose fate you are now to decide. But, gentlemen, suppose you take him to be as wicked and as malicious as they represented him to be, what has that fact to do with this case? Have I laid before you one single word of evidence, as to that man's declarations, made before any magistrate? Before any magistrate in the privy council? Before the privy council? Or made any where? Have I not put the case to you, desiring that all that could have been stated

should be forgotten—that it should be forgotten wholly—if a single syllable of it has found its way into the evidence? I have endeavoured not to bring before you, lest it should endanger your consciences, one single word of declarations made by that man, Upton. I have proved, indeed, some particular facts, with respect to certain things which were in his possession; with reference to which facts I shall have to trouble you with some observations presently; but all testimony as to his declarations you may utterly disregard; and when you come to determine between your country and the prisoner, you will be so good as to decide this case, assuming as a fact that Upton never in his life knew any thing relative to the transaction, except what is proved to have passed in the presence of the prisoner; and that he never uttered one word about this matter, except what he is proved to have uttered in that presence. Gentlemen, I am content to go farther, for I can agree that, as to Upton, you should not only believe that he has said nothing more; but such is the nature of the proof in this case, that you should even act upon the supposition that if he had been here present, in order to be examined, he might have spoken favourably for the prisoner. I have no objection to your taking it even in that point of view. The proof is such, that even then the result of it cannot be misunderstood. The case comes to this. Is there, upon the evidence, independent of all the transactions in which Upton may or may not have had a concern, sufficient testimony to establish that the person at the bar did conspire, either with Le Maitre, Smith and Higgins, or with any other persons, for the purposes mentioned in the indictment? Or is there upon the evidence, independently of all such transactions, sufficient testimony to establish that he, if not in conspiracy with them or others, did any such acts as can be considered as charged against him alone in the indictment, for such purposes? My lord, I hope, will go along with me, by-and-by, in what I am about to state to you; or, on the other hand, I trust he will do that, which I am sure I need not entreat him to do, and which I shall be most thankful to him for doing, he will correct my view of the subject. I say, did the prisoner conspire with the persons named, or with any other persons? If Smith, Le Maitre, and Higgins are as innocent in fact, as I am bound at this moment to suppose that they are; yet, if this prisoner conspired with Upton, Palmer, or any other persons, as is charged in the first overt act laid in the indictment, and if the conspiracy was with the intent charged in the indictment; and if there is legal evidence both of the fact of the conspiracy, and of the intent with which the conspiracy is charged to have been entered into, then the prisoner must be found guilty. I say, moreover, that, putting all conspiracy out of the case, and supposing

that no man living, except the present prisoner, can be charged with any guilt, yet if this prisoner did that which is stated as the second overt act, or if he did any such acts as are stated in the record, where the purpose of putting the poison in the arrow is left out; if he employed Hill, for instance, as to the drawings or model of the instrument, whether in concert or not in concert with other persons, who did or did not know his intent, if such circumstances be proved sufficiently, though against him singly, and his acts are proved to have been done with the intent charged in the indictment, and proved by legal evidence; I say, moreover, that then also you are bound, speaking always under the correction of my lord, to find the prisoner guilty, I agree that, if neither the facts of the conspiracy, nor his own acts, as charged in the record, are made out, or if they are not made out as connected with the intent charged in the indictment, or if made out with the intent charged in the indictment, they are not established by legal formal testimony, you cannot convict the prisoner. There may be very great inconvenience, perhaps, in the state of the law with respect to proceedings in cases of this kind; but God Almighty forbid that I should ask you, or that you should treat me otherwise than with some degree of indignation, if I did ask you to find any man guilty upon any other state of the law than such as it is, when you are sworn to decide upon the facts according to it.

Gentlemen of the jury, the first question put to you by the prisoner's counsel, by way of general observation, is this: it is said, with what motive could the prisoner possibly do these things? Why, how is it possible for men in courts of justice, administering the law, to answer that question better than by referring to the motive, to which the law ascribes such facts? If you should be satisfied, in the result, that these things were meant, the conclusion of law upon the case is, and it must be the conclusion of fact, that the motive was that which the law calls a malicious one. Gentlemen, the purpose—and this does not depend upon the evidence of the sailors from Brest—the purpose was at least a secret one. Why was it a secret purpose? You will recollect that the first witness, Dowding, speaks to you with regard to the application made to him by Upton, and also the prisoner Crossfield (for it was proved afterwards by Mr. Palmer that Crossfield was the person who went to Dowding, with Upton and with himself); that he tells you that he inquired for what purpose the tube was wanted; and that the answer was, that, with respect to the purpose, it was a secret. I repeat to you, gentlemen, what I observed in opening the prosecution, and I submit to your candour that the observation is fair, that when you see an instrument framed, such as that which has been described, calculated to be used for such dangerous purposes as Mr. Mortimer proved

upon his oath last night that it was capable of being applied to; when you see that a feathered arrow was intended to be fabricated, capable of being used for the most mischievous purposes; and when you see, beyond all question, that the prisoner at the bar is implicated in the fact of being concerned in the framing and fabrication of these things; and when you hear besides the testimony of four persons (if I am to reckon Mr. Winter as one, with respect to whom I shall say a word to you presently), or the testimony of three persons, against whose integrity, against the purity of whose motives there has not been even a suspicion intimated in this court; when you hear from them for what purpose of mischief these things were stated out of the mouth of the prisoner himself to have been framed and fabricated, I repeat to you that, in such circumstances, some attempt ought to be made on the part of the prisoner (and none has been made) to satisfy your consciences what was really the purpose intended by those who fabricated these things, if the purpose intended was not, in truth, that which is charged upon this record, and that which the prisoner has fifty times over, if you give credit to Mr. Winter, avowed it to be.

Gentlemen of the jury, you have heard observations upon the state of the times, when this accusation was brought forward. You have heard that the times had a tendency to encourage plots. You have heard of the trials for high treason. You have been plain in mind of the event of those trials for high treason. The juries of the country administered the justice of the country; and of the administration of the justice of the country, I am not the individual who means to say otherwise than that it is well administered. I know that the constitution of this country, the life of the sovereign, every blessing which we can enjoy in the country, is finally to find its security in the verdicts of juries. But how do any observations upon those trials, either with respect to the magnitude of them, or the nature of them, or the event of them, or upon any transactions respecting them, apply to this sort of case? Gentlemen, did those trials induce Upton to stand forward to charge these people with a plot? Be it so. But do you think that those trials, or the transactions which had relation to them, induced all these brass-founders to conspire? That they induced these sailors when at Brest, to conspire? And that, in order to help out Upton's story, represented to have been made out for his own safety (though I do not see how that could have been so effectually put in danger, as by his own relation of his own guilt), all these brass-founders and sailors have been induced, by the state of the times to give the evidence which you have heard? Surely there are, in this case, circumstances of the most singular kind that ever happened, if Upton coined the whole of this plot. There are no less than four brass-

founders in England who relate that, in fact, application was made to them for the purpose of fabricating such an instrument, as he says was intended to be framed. There are, then, very singular circumstances in the conduct of the prisoner. You find the prisoner absconding as if he was guilty; you find the person avowing the plot which Upton was bringing forward: declaring his guilt; making declarations respecting the purpose of the fabrication of this instrument, and the nature of the instrument, such as you have heard: and you find three or four witnesses coming along with that prisoner from a distant country, unimpeached, and unimpeachable in character, swearing before you and before God, to his declarations of his guilt, as declarations so seriously made as to impress them in the manner they have mentioned. Can all this originate from the times, and the state trials?

Another circumstance has been stated, of improbability arising from the nature of the place where this plot was to be executed; I mean Covent-garden theatre. The theatre has been mentioned, as you recollect, by two or three of the witnesses who came from Brest. Why, gentlemen, God be thanked, it is perhaps the best security we all have against the wickedness of men who are disposed to act wickedly towards us, that such purposes of the heart are not always conducted under the influence of the wisest heads; but I see no improbability in this. I know, from the history of transactions in this country, that in open day light, that in the open streets of this town, through a very considerable part of this town, the person of the sovereign may be attacked, and yet that it is impossible to find out the individual who is guilty of the outrage. With respect to the place, therefore, it appears to me to be a place as well adapted for such a purpose, considering how Mr. Mortimer states that it could be executed, as any other place. But whether the place was well or judiciously chosen or not for the purpose, I am persuaded my lord will tell you, if a step was taken for the fabrication of this instrument, that that step, though an injudicious one, is a sufficient overt act (if it be sufficiently proved) to manifest that compassing and imagination which makes the crime within the statute.

Another observation was stated to you, that you had here a strange set of conspirators, ignorant of the nature of air-guns. If they were ignorant of the nature of air-guns, they took some pains to inform themselves of the nature of air-guns, and to remove that ignorance. They applied to Cuthbert, who, you recollect, informed you that an air-gun had been shown to two persons that came to him; but Mr. Mortimer must have satisfied you, if that fact to which Cuthbert deposed was a fact which showed the ignorance of the persons concerned, that at least they had become so wise in this profession of making

air-guns before the model was finally delivered to Hill, that though Mr. Mortimer tells you it is not very skilfully done, yet he says that from that model he should collect that an air-gun was intended to be made: that though it is not the handy work of a skilful artist, it is a sufficient paper to enable a person, understanding the subject, to fabricate an air-gun: and with verbal information, Mr. Mortimer says, even that part of the wooden model, which has been produced to you, might be adapted to the fabrication of this dangerous instrument.

Gentlemen, it has farther been stated to you, by way of a general observation, that Crossfield and Upton's acquaintance had been very short. Now that tends a little against a former suggestion, that he could have malice against Mr. Crossfield. No circumstance has even been hinted at that could, in that short acquaintance, infuse into his mind any malice against the present prisoner. Short however as their acquaintance was, they had become excessively intimate: for it does not depend only upon this fact, viz. that Mrs. Upton has sworn that she has often seen them together, but it is clear that, short as their acquaintance was, they were intimate enough together to set about the fabrication of an instrument, capable at least of being applied to purposes of extreme danger. Their acquaintance was long enough (that is out of all question) to lead them together from Upton's shop to one brass-founder's in the city; to lead them together to another brass-founder's; and from him again to a third; from him to a fourth; and from him to Hill, and there to deliver to that person the paper, which will be exhibited to you, and which I have now in my hand, which contains the drawing of the wooden part of this instrument. I think you will see clearly that their acquaintance had been long enough, and sufficiently intimate to introduce them to so much of connexion with each other, as to induce Mr. Crossfield to become a party to the fabrication, or at least to the drawing the model of this instrument, containing the representation of the figure of that arrow, which might be replete with poison, as Mr. Mortimer tells you, and at all events was replete with infinite danger.

Gentlemen of the Jury, another observation has been made, which is this; that there was no proclamation for Mr. Crossfield till the month of February. Be it so. In the first place, you will recollect that Mr. Palmer, who was called to you, and I say no more of him than that he was an unwilling witness; that Mr. Palmer informed you that he had undertaken to procure his attendance; and it is not immaterial that he had undertaken to procure his attendance too, according to his evidence as a witness. Moreover, I apprehend that any man who understands a subject of this kind, will go along with me in believing that a proclamation with a

reward, is that which is full as likely to send the person described in it out of the country, as to procure his attendance in it; and whilst Palmer's engagement to procure the attendance of Mr. Crossfield stood good, till there was no hope that that attendance would be procured according to that promise, I must take leave to state that it would have been a very imprudent measure to have issued such a proclamation. But if this be otherwise—how can such a circumstance blow out of court the effect of all the rest of the evidence, which has been given you in this case? And with respect to fact, if there would be any justice in the observation which I have been making upon general principles, does not the conduct of Mr. Crossfield, when this proclamation is issued, most distinctly and clearly prove that it was not a measure calculated to procure his attendance? The prisoner, you have seen, left London, and went to Bristol, when this matter was first brought forward by Upton. It is stated by Palmer, that he went there for the purpose of considering whether he should not establish himself there in the medical line; he intimates that that was his purpose. Now you will permit me to submit to your judgment this observation; that it is impossible but that the prisoner, before he went there, must have known that Upton had made a charge against Smith, Le Maitre, and Higgins: that fact, beyond all doubt, he must know. Then either he knew Smith, Le Maitre, and Higgins to be innocent, or he knew nothing of the matter with respect to them, and he did or did not know himself to be innocent. If he was himself innocent, you will be pleased to recollect that it is proved, beyond contradiction, that he had taken this part at least with Upton, namely, to go to all the brass-founders, and to proceed in the fabrication of this instrument to the extent to which it is proved he did proceed, by being a party to these drawings, from which Hill fabricated the wooden models. He was certainly then a person who could give information upon this subject. It was absolutely due to Smith, Le Maitre, and Higgins, that Crossfield, if he knew as much of this matter, as it is proved beyond a question that he did know; and if he knew that the transactions, up to this period, had been connected with no manner of guilt, it was his duty to them to have come forward, and to have stated the transactions as they were, and to have assisted in clearing these men, who have been represented this day as innocent. If he was innocent himself, he came forward without any danger. If he was guilty, or if there were circumstances that would implicate him in a strong suspicion of guilt, he might have a reason for not appearing at the privy council as a witness. He goes however to Bristol upon the errand which has been mentioned. The names of any persons whom he saw there are not mentioned in evidence: his making

any inquiry, in reference to the purpose for which he went there, has not been given in evidence. He comes up to town: he does not go to his lodgings in Dyer's-buildings: he does not even call there, during the whole time he is in town: he goes to a lodging in Wapping, a singular removal for a medical man who meant to settle at Bristol, according to Palmer's evidence. The evidence of Palmer, who had been with him at Bristol, who states his privacy to his purpose of going to Bristol, who had seen him at Bristol, his farther evidence, if I take it rightly, is this, that, having undertaken to bring him before the privy council, he never saw him when he was in town, but at his own chambers.

Then he goes down to Portsmouth. It does not become me to represent to you, because I think the evidence does not authorize me to do it, that the captain of the vessel might not know his name; and I shall remark to you more fully presently, with respect to the absence of this and other captains. I think that in the absence of these captains, whatever they might probably know favourable to the prisoner you ought to consider them as knowing, and give him the benefit of all the supposition that you can make in his favour. I will put the case then, if you please, that captain Clarke knew the name of the prisoner: it does not appear whether the rest of the crew did know it or not: but it appears that he went by the name of the Doctor, from the time he embarked at Portsmouth till they went to Falmouth. He appears to have been repeatedly on shore at Portsmouth, and it is fit I should state that for his benefit. At Falmouth, as the evidence stands, he never was on shore but once. Whether you ought to collect from the nature of the account that has been given, any reason to suppose that he remained on board for the purpose of concealment, I rather leave to your judgment to decide, than to take upon myself to determine. However, this is clear, that there is, in point of fact, no one witness who hears this man say any thing with respect to his own situation, as connected with this project, till after they had sailed from Falmouth; and it is a material thing that the conversation of this man relative to this project, when he says that Pitt would send a frigate after him if he knew where he was, begins two days after the vessel had sailed from Falmouth, upon a voyage, which, as one of my learned friends most truly states to you, generally endures fifteen or eighteen months, or more, and in the course of which there is no land to touch at. Having left Falmouth, he begins the conversation with one of the persons, in which he says, that Pitt would send a frigate after him. He is afterwards captured, and carried into the harbour of Brest: while he is there, it appears now to be in evidence from the defendant's own witnesses, that he stood at least in a situation of so little dislike among the persons

with whom he was living, that it has been stated that he might have had a situation of advantage there. Gentlemen, you will recollect, with reference to that, that it is proved by other witnesses, that he stated before he left Brest that he had settled matters to his satisfaction, and, having settled matters to his satisfaction, what is it that he does? He assumes the name of Wilson; and he not only assumes the name of Wilson, but he does this also, he takes the name of Wilson, as a person of that name captured in the ship Hope. Now, an observation has been offered to your attention of this sort, namely, that he was afraid of his creditors in this country. Supposing he changed his name to Wilson, on account of his creditors in this country. What occasion had he to state that he was captured in the ship Hope? Would his creditors have found him out more readily by the name of Wilson, captured on board the Pomona, than by the name of Wilson captured on board the Hope? It is impossible for me to account for that circumstance. It is my duty to mention to you what my learned friend who spoke last stated—that government knew the names of the persons who came on shore in this country.—It might be his project to take the name of Wilson, as captured in the ship Hope, with a view that it might not be understood that the person who came on shore at Mevagissey, was not Wilson captured in the ship Hope, but Crossfield captured in the ship Pomona; and I dismiss that part of the case with saying, that I cannot comprehend why the ship Hope was inserted with reference to any purpose in which the creditors could be concerned.

But, gentlemen, consider what is stated by Penny, whose testimony is totally uncontradicted, whose character is wholly unimpeached, and, which I have therefore a right to say before a British jury, is perfectly unimpeachable. The prisoner applies to him in the course of the voyage home—and what does he say to him? Does he say, I beg you will not mention that I have taken the name of Wilson as captured in the ship Hope—for fear my creditors should lay hold of me?—No:—He says, “You remember what I stated to you on board the Elizabeth.” What was it he stated on board the Elizabeth?—That which I say is a confession of the fact charged.—He did not tell him on board the Elizabeth, that he was afraid of his creditors, and therefore about to change his name to Wilson, and substitute, instead of the Pomona, the name of the ship Hope; but he tells him that he was the person engaged in this scheme of assassinating the king, by means of a tube and barbed arrow—and that is the information which Penny is desired by the prisoner to forget in the course of this voyage.—Now, why he was to forget that, is a question which your consciences must determine.

But this is not all:—When he comes on

shore, he is taken into custody, in consequence of an information given by Winter, who states a foolish story of a hare; and I am ready to admit, and think it becomes me to do so, that that seems to my mind at least a circumstance of such improbability, that, if this case depended upon Winter's testimony (though I believe a great deal of it, and I will state my reasons by-and-by why I do so) I should think it an extremely hazardous thing to come to a conclusion against the prisoner upon his evidence alone. Winter went before the magistrate; and, whether Winter's understanding is considerable, or whether it is of that ordinary sort, that entitles captain Collins to call him a foolish fellow, the fact is, that the man's mind was so much impressed with the truth of what he has related here to-day, that he did think himself bound to state the facts to a magistrate, and, wise, or mad, or foolish, or whatever you please to call him, such an understanding, as he has, has been at least fortunate enough to conceive of this business as the understanding of three other sensible men have led them to conceive of it, who, in point of fact, confirm him in every circumstance that he has stated, except one, and that is the fact of the king having been actually shot at.—Now, the prisoner knew in this stage of the business, whether he came to this country for the purpose of avoiding his creditors, under the name of Wilson of the Hope, or whether he came to this country under this name for the purpose of concealing a person, who was a party to the transaction charged upon this record. He now knew that he was accused of this most heinous offence.—What would have been the conduct of Mr. Crossfield, if it was false that he had been party to this transaction? if it was false that any such declarations had been made in France, as these four witnesses have spoken to? I should be glad to know whether it was not, in the natural course of transactions, that Mr. Crossfield should have said—Let me go to this magistrate: I did leave the kingdom of Great Britain for foolish reasons, for reasons against the influence of which Palmer the attorney, ought to have protected me, I did leave that country under circumstances of some degree of suspicion; but I have been an unfortunate man, captured with my fellow prisoners in Brest. I am sure that neither Winter nor any other of my fellow prisoners, coming home with me in this ship, can add to the suspicion by any information that can be given as to what my conduct in France has been.—But is that the case?—No—on the contrary, instead of meeting the investigation of the magistrate, instead of avowing his innocence both in his transactions in France and in this country—though he knows that the charge is made by one of his fellow prisoners, who came over with him, the mode which he takes to get rid of the effect of the charge, as he is conveying to prison, is what has been stated by two

witnesses. Questions are put whether he was not drunk, and whether he did not fall asleep within half an hour after he spoke of the pistols and the post-boy: With respect to the effect of the answer to these two questions, that is for you to judge of; but there is no evidence that he did not understand what he said. He attempts to corrupt the officers, and follows that up with a conversation, which I wish to represent accurately, because it appears to my judgment excessively material.—He says, you had better than have five shillings from those who are to pay you if you carry me to gaol, have two guineas a piece from me to let me escape.—The officer inquires what he would do with the post-boy?—His answer is to this effect—Lend me that pistol, and I'll settle that.—This has been spoken to by two witnesses.—Now, I put it to you, as men of conscience, is this the conduct of an innocent man? Is it not the conduct of a man guilty of something? If it be, I say it is conduct which proves to demonstration the truth of what the witnesses, who come from abroad, have said. It does not prove the truth of what the witnesses here have said; but it proves a strong suspicion in the mind of the prisoner, that, when the persons here, who were capable of being brought forward as witnesses, were brought forward to speak to facts, and those facts should be connected with the effect of the declarations made abroad, something would be proved, from which a jury might infer, that the fact, of which he is guilty, is the fact charged upon this record.

Gentlemen, you will allow me now to draw your attention to material and weighty observations, which have been made to you upon that sort of evidence, which has been termed, in the course of this business, confessional.—Gentlemen, I repeat to you again, on behalf of myself, and every individual in the country, that the acquittal or conviction of a single prisoner is nothing when compared to the sacrifice of a great principle of justice. If, therefore, there is not legal clear evidence to convict this prisoner, if he is not “provably attainted” according to the true meaning of those words, which my lord will state to you presently,—you may perhaps see, that there may be persons in this country who are in great peril from the machinations of others—you may perhaps see that persons in the highest situations are in the most peril, because they are not defended by that law, which says, that as to offences against our fellow subjects, one witness is sufficient.—You may see all this; but you must not therefore convict that man. The evidence must be such as the law requires to satisfy your consciences: whether it wisely requires such evidence, it is not for you to consider.—All that I ask of you on the other hand, is, that you will attend to the consequences of not convicting, if the evidence be legal, be sufficient in point of law, in a case of so much importance as this.

Gentlemen, it is very true that confession, as evidence, is open to all the weighty observations which have been stated from the authors, whose works have been quoted to you.—They speak the language of common sense in strong terms. With respect to high treason, the books go beyond what has been stated; if there was no evidence but confession, I am ready to admit, if that confession had been made before twenty witnesses, yet so much has the law guarded the party against the consequences of mere confession, where there are no facts and circumstances, established by testimony which corroborates it, that it would be insufficient. The law has said that no man shall be convicted of high treason, but upon his own confession before a magistrate, or in open court.—Therefore, gentlemen, if I had called these witnesses from France to state to you that this party did make such and such declarations, and had proved nothing else in the cause, my lord would have told me, the moment I had stated my case, that it was due from him to the justice of the country to tell the prisoner that I ought to give no evidence against him.—But it is far otherwise, when evidence of confessions is opened—not to prove the fact done, but to prove the intent with which the fact was done,—an intent that never can be, or but seldom can be, collected otherwise than from such evidence: it is far otherwise when a great variety of facts and circumstances have been proved; and when a confession is made, proved by a great number of witnesses, that confession consisting of very particular and very singular circumstances, and those very particular and very singular circumstances indenting, as it were, and squaring with the facts which have been proved, in such a manner that it is absolutely impossible, in the nature of things, that a man could make the confession, who had not been connected with the facts otherwise proved, and of which he gives an account in the confession.

Gentlemen, it is said, and said truly, in those authors, that there is great danger of perjury where you have nothing to go upon but confession. But this never applies to a case where a great number of facts and circumstances are proved; where the confession connects itself with those facts and circumstances; where the proof of those facts and circumstances by other witnesses supports the truth of the confession, and the truth of the confession, aids, assists, and holds up the proof of those facts and circumstances; where the danger of perjury therefore is avoided by the very nature of the facts confessed, by the correspondence of the matter confessed with existing facts; where there are a great number of persons speaking to confessions; where the confessions are made at different and at various times, yet all corresponding and connected with each other, as to the substance of them; where the confessions are aided by the demeanor of the party, and

where the conduct of the party gives proof that the confessions he had made are founded in truth. To illustrate this, if Penny had been called to say, that, when he was on board the *Elizabeth* in France this prisoner said so and so, and nothing more had passed, that confession would have one degree of weight. When it is proved, not only that he said so and so, at such a time, but that an application was made to a man, in the course of the voyage home, not to disclose the confession that he had so made, that circumstance adds another degree of weight. When the substance of the confession spoken to by that one individual, is spoken to by three or four other individuals, the matter acquires a still greater degree of weight, though, after all, if you put them all (the confessions) together, they would not be sufficient evidence in the case of high treason. But, when you have witnesses speaking to these facts, which are the overt acts,—witnesses speaking to the facts of two or three persons applying to Hill, sometimes two, sometimes three, to the four brass-founders to whom applications were made,—and when it is proved that one of the persons engaged in each and every of these applications to the brass-founders, and in the application to Hill, was the prisoner at the bar,—when you have two witnesses to the facts, and the person is ascertained, and confession is added, which shows the intent with which these facts were done, I say the conspiracy is most completely proved according to law (supposing Smith, Le Maitre, and Higgins are perfectly innocent) and not only the conspiracy, but the sole acts of this person amounting to treason, are proved according to law. What are these confessions? are they stated in a loose moment? are they casual confessions?—They are repeated confessions—in four or five instances: they make mention of circumstances as facts, which never could be mentioned at all, if they did not exist, and which are proved to have existed: it is proved for instance, as the matter of the confessions imports, that, in point of fact, applications were made to these brass-founders; that applications were made to Hill; it is proved that drawings existed—drawings which described the form of an arrow, a barbed arrow, which described a tube, a feathered arrow; and which described the parts of a wind-gun.—Now, gentlemen, attend to the circumstances that are stated in all the confessions of the prisoner, the confession to Dennis, the confession to Le Bretton, the confession to Penny, the confession to Winter.—Do not the confessions to these persons in Brest harbour most minutely correspond with facts, models, and drawings proved to have been done and made in England? Perhaps you may not give Winter's testimony any considerable credit. I will state to you a reason upon which I submit you ought to give him credit, notwithstanding what you may think of the rate of his un-

derstanding. Is it not one of the most remarkable things that ever happened, if Mr. Crossfield had had no connexion with the purpose charged in this indictment, that he, in Brest, should, in the very terms of his confession, describe, almost to the minutest accuracy, every thing which is depicted upon this paper? he speaks of an arrow, a barbed arrow—he speaks of a harpoon; he draws the form of it, to show it, as feathered, to Winter: he speaks of the poisoned arrow: he speaks of the tube? he speaks of a wind-gun; he describes, not only the instrument, but almost every particular which actually belongs to, and appears in the drawing now produced to belong to, the construction of it.—Gentlemen, it is said, and said very truly, that the weight of confession depends upon the mind receiving the confession, and the mind conveying the confession. But did this ever happen before in any case, that a man should in no less than four instances, address his confession, at four different times, to four different persons; that these four different persons should agree with respect to the state of his mind when he was conveying the confession, and that the state of their minds, when they were receiving the confession was precisely the same, as to each and every of them? These four persons, understanding him to be conveying the state of fact as to these instruments, all agree that the impression upon their minds was that which they have stated to you to-day and yesterday, it was an impression that he was confessing his participation in the guilt now charged upon him.

Gentlemen, the declarations of persons in a case circumstanced as this is, are not, I apprehend, to be considered as confession of facts; they are not confession of the facts; but they are declarations evidencing the intention with which the facts, otherwise proved, were done. Suppose, for instance, that a man were to point a musket towards his majesty, and any other person who had the honour to be attending him any where. Two witnesses swear to the fact that that musket was pointed in such a manner, that a jury is satisfied that it was pointed at his majesty, and not at the other person; but, the instrument not being actually discharged, it remained to be tried with what intent it was pointed at his majesty. Is the state of the law of this country such, that that fact of presenting the musket having been proved by two witnesses, evidence of declarations by the party with respect to his intent, connecting themselves, as Mr. Justice Foster puts it, with circumstances proved and with facts proved, is not sufficient to establish the intent?—Is it to be said, that, it having been shown by the two witnesses, that the gun was so pointed, the testimony of twenty witnesses, proving that they had heard the man say that he meant to discharge it at the king to kill him, does not amount to legal evidence

of his intent?—I cannot so understand the law of England: if I am wrong in that, you will hear from the wisdom that administers the law here, that I am so, and will undoubtedly give the prisoner all the benefit that results from that correction.

What was Crohagan's case, which my lord may recollect? He said, "If I go to England, I will kill the king." The fact of his coming to England was proved: mere words do not amount to treason: this fact was therefore proved: *quo animo* he came to England, was established by proof of his own declaration of the intent with which he would come: the fact of his coming to England, the overt act, it might be necessary to prove by two witnesses; but it is not in the nature of things that the law should be so absurd as that this should be held by it, that, where the fact is distinctly proved, as laid in the indictment, a man shall not be at liberty to explain his own intent by his own declarations, or that the law should shut out evidence of those declarations, when other witnesses speak to them.

Having stated to you what I conceive to be the rule of law with respect to confessions, under the correction of my lord, the case, I take it, as proved against the prisoner, is this—That he was concerned, together with Upton and others (whether Le Maitre, Smith, or Higgins belonged to the conspiracy or not, is not material for your consideration) in the forming of an air-gun; that is, to speak in the technical language of the law, his heart compassed and imagined, at least, the formation of an air-gun; and here I go most distinctly along with the learned judge, who intimated yesterday, in strong and express terms, and which perhaps he will repeat again to you to-day, that if we get no farther than to prove that Mr. Crossfield went to the brass-founder's and went to Hill's, and made a model, and meant to fabricate an air-gun, and did begin to fabricate it, we have no case of treason against Mr. Crossfield. We must make out that these measures were taken with intent to effectuate (whether sufficient or not to effectuate it, will hardly be necessary for me to discuss, after the evidence given by Mr. Mortimer) with intent to bring about the death of the king.

Now, with respect to the fact, that he was concerned in the fabrication of this instrument—it is beyond a doubt that three persons were at Dowding's; that three persons were at Flint's, is unquestionably proved; that three persons were at another brass-founder's, is unquestionably proved; and that two went, I think, to Bland's, Palmer not being one of the men, is also beyond doubt. Palmer proves Crossfield to have been in that party: it is proved therefore beyond all doubt, if Palmer's evidence be taken to be true, that Mr. Crossfield was one of the persons who was concerned in the fact. The fact is proved by three witnesses, viz. Dowding, Flint, and Bland, and by another Brass-founder. The

fact of applications to brass-founders to make such an instrument as this, is proved by four witnesses; and if it be proved that Mr. Crossfield was one of those persons, I take it, if we stop there, the case, as to fact, is made good. Bland's evidence is extremely confirmed by Palmer's evidence; for Bland states that two persons came to him, the one of whom was Upton: he did not know the other person. Palmer states in his evidence, that two persons went to Bland's, that he came to Bland's after these two persons, and that the two persons, who were there, were Upton and Crossfield. Besides this, it is proved in point of fact, that all the three were at Hill's; and Palmer proves the fact, that Crossfield was one of the persons who was at Hill's. What was done at Hill's, it will be material for you to attend to, when my lord comes to sum up. There are more than one person to speak to one or other of the facts charged; that is, to the fact of going to the first brass-founder's, then to the fact of going to the next brass-founder's, to the fact of going to the third and fourth brass-founder's, and to the fact of going to Hill's; and Hill states, not only that Upton took part with respect to the drawing, but he expressly states as I took his evidence (if I am incorrect, I hope my lord will set me right, and that you will not do me the injustice to suppose I am intentionally incorrect), that the stranger, who, it has been proved, was Crossfield, did something to the drawing, as well as Upton. So he states, though it is not necessary to prove that fact, because I apprehend there can be no manner of doubt, that, in point of law, if the purpose of Upton was to fabricate this instrument, with the intent which we have charged in this indictment; and if Mr. Crossfield, knowing that purpose (of which it will be for you to judge), attended him to these places, and went through the consultations along with him, he is just as guilty as if he had been the spokesman upon each and every one of those occasions.

God forbid, gentlemen, that I should press the case more strongly than I ought; but I must remark that these witnesses, the brass-founders, speak, one after another, to circumstances that require observation. One tells you, that the persons who came, said that the use for which the instrument was to be made was a secret; another seems to me to prove that their enquiry about the expence, and their enquiry as to the time it would take in making, were anxious. For what particular purpose it was to be made, the prisoner has not explained, nor why there should be any anxiety about the time to be employed in making it. But when that time is made a circumstance for enquiry, it seems to me that the instrument must have been to be fabricated to be ready at some time, which the party was looking to, for some purpose then to be carried into effect.—Hill said it was to be for an electrical machine: to one witness they represented it, you see, to be for a secret

purpose; to another, the use of it is falsely represented. All these witnesses speak of a tube; and the declarations of Mr. Crossfield, made in France, mention a tube, as well as a barbed arrow.

Gentlemen, as to the evidence of the witnesses to the prisoner's declarations abroad, is it possible that that evidence can be false? Upon the supposition that it is not true, is it not the most marvellous thing that ever happened in the course of human events, that the circumstances detailed in the declarations spoken to with respect to the existence of a tube, with respect to the existence of the intention of employing an arrow—a barbed arrow—a feathered arrow, in the form of a harpoon—should every one of them receive the semblance of truth so strongly from the fact that Upton, who was along with them at these brass-founders' houses, should actually have in his possession such a brass tube as was mentioned; from the fact that this same Upton should have in his possession this drawing of an arrow, in the minutest circumstance tallying with the effect of those declarations, which the witnesses from France inform you were there made by the prisoner?—Is it to be accounted for, in the nature of human things, that the prisoner could state himself, in these declarations, to be one of the persons to assassinate the king with instruments, such as he describes in those declarations, and that instruments, or models or drawings of instruments, tallying with that description, should be found in the possession of Upton, who was with him when he called at these brass-founders' houses, if the prisoner did not mean to speak that which was the truth, and which he knew was the truth? Such a coincidence of circumstances seldom happens to make good the truth of declarations, and declarations are seldom found to correspond more exactly with circumstances which actually existed. Such an instance very rarely occurs of declarations so made good by the actual existence of facts, as that which is furnished by this case.—Then, gentlemen, this comes at last simply to the question of intention. I before mentioned that I had some observations to make to you about our not calling the captains. Gentlemen, it is perhaps one misfortune, if I dare to use such a word with respect to any provision of the law of my country; but it certainly is a circumstance possibly to be occasionally regretted that the law has ordained that the prosecutor shall not add to the list of witnesses which he has delivered to the prisoner. I am therefore bound, in the discharge of the duties of my office, to determine between the difficulty of trying persons upon such evidence as I can bring forward, or the delaying a trial without a possibility of determining when I shall be able to bring forward more evidence.—I add, gentlemen, that in this case of high treason, I meant most studiously to abstain in opening it—and I hope my lord will go along with me

in thinking that I have not failed of my purpose—most studiously to abstain from stating to you the substance of any conversations, or declarations, or language, seditious or not seditious, which this prisoner might have used when he was abroad, or when I could have placed him in other situations, if they had not a direct application to the subject now before you, and did not amount to declarations upon the very point now before you.—Perhaps, gentlemen, I did the prisoner no injustice in that respect. I might have known—I do not inform you whether I did or not—I might have known that I could have called a witness to prove the fact of the prisoner's singing that song of "Plant, plant the tree," some part of which has a very strong application certainly to a general purpose, hostile to the existence of kings—it is, to state it altogether, the most complete epitome of anarchy that I ever saw in my life. You will observe, if you cast your eyes over it, that it contains, in the shape of a song, the avowal of an overt act of every species of treason known to the law of England. I did not wish originally to bring forward such facts as these; I thought it not otherwise than fair, as between the country and the prisoner, to abstain from doing so.—I know that there are individuals in the country, who may blame me for not pressing prisoners up to the extent, in which they may wish that I should do so. I am satisfied, upon reflection, and I have formed my own determination upon that subject, that a lenient administration of the law, is the wholesome and salutary administration of the law: it is that which is congenial to the character of Britons; and I am persuaded that a miscarriage of justice by lenity, will never deeply affect the administration of justice in the country. On this account, I did not choose originally to bring forward such evidence; but when captain Collins was called, and when I was willing to give credit on behalf of the prisoner to this extent—that you should believe that every man, whom I either did not call, or could not call, had nothing to say but what was favourable towards the prisoner; when captain Collins was to be brought forward to give such an account of the demeanour of the prisoner abroad, as I was taught to expect, from what had been opened, he would have given, it was my duty to ask Mr. Cleverton, when he had mentioned the circumstance of the republican songs (for I would not originally have introduced it) whether that song was not sung by the prisoner. It is now become part of the evidence; it is a declaration in evidence of the general sentiments of the prisoner, if you think he entertained the sentiments that song expresses; and I say that that song amounts to distinct evidence that the writer of it, or he who adopts its sentiments (to what extent this prisoner adopted them, is for you to determine, and not for me to decide) is a man not only not friendly to the constitution of his country, or to the

being of a king, but capable of proceeding to any extent in overturning every establishment, civil, and religious, in the country. I think it my duty, however, on the other hand, to say to you, with respect to all persons not produced, who either could be produced before I delivered my list of witnesses, or could not be produced because I had delivered my list, you must do the justice to the prisoner to persuade yourselves, that no one of them could have said any thing, other than favourable to him.

But, gentlemen, when that is done, it is for you to decide this great case. The direction, which you may receive here, in matter of law and as to the sufficiency of the evidence, if wrong, may be corrected. It is the boast and glory of the constitution of England, that we do not in this country proceed upon those foolish theories of perfection, which are not made for man. The constitution of England is founded upon principles which regard those who are to live under it, as being but men.—There are no parts of our institutions, in which we do not acknowledge the infirmity of the wisest, and the highest,—and best of those who may be called to administer them.—In the administration of justice, prosecutors and juries, we acknowledge, may err; and it is perhaps the highest commendation that can be stated of those sitting above me, that they are always anxious to set right the effect of their mistakes, and are never influenced, in the execution of their duty, by a false pride to be unwilling to see, or, seeing, to correct their errors.—I have said here, that you have a clear case before you. You will have the judge's direction in law: if you are satisfied by that direction, as to the matter of law—if you are convinced by it, that the evidence offered is competent and legal evidence, to be offered as proof, I must then, gentlemen (I am saying this in circumstances that distress me; but I am bound to do my duty firmly to my country, however painful it may be to myself), I must then call upon you to lay your hands upon your hearts, and either to say that the prisoner is guilty, or that these sailors, who come from Brest with the information which they have given you, are, every one of them, perjured.

Gentlemen, the law of this country, in its benignity, wishes every prisoner a good deliverance: it is the humane language of the law—after he has pleaded, it says to him, God send you a good deliverance.—My prayer is, that you may be able to find in this evidence, that which will justify you to God and your country in acquitting the prisoner; but, if you cannot find that in the evidence, it is likewise my duty to my country and to every individual who lives in it, to entreat that you will most seriously recollect in what a situation of peril, danger and hazard, incapable of being described, you place the country, and the sovereign of it, if the case be such as ought to satisfy your consciences, and, being

such, you should hesitate about pronouncing the verdict of the law! may God direct you in the execution of this duty! I am sure the country will be satisfied that you mean to execute it with integrity; and, feeling that confidence, I shall rest upon your conclusions with the most perfect satisfaction.

Mr. *Adam*.—My lord, my learned friend Mr. Gurney desires me to state one circumstance that he omitted to mention, which accounts for Mr. Crossfield's knowledge of this supposed conspiracy to assassinate the king by the means of an air-gun and a poisoned arrow—that immediately upon the apprehension of Smith, Higgins, and Le Maitre, all the circumstances to which Upton had deposed were published in the newspapers.

Mr. *Attorney-General*.—I do not know the fact; but it is very probable.

Mr. *Justice Grose*.—I dare say they were.

SUMMING-UP.

Lord Chief Justice *Eyre*.—Gentlemen of the jury,—This prisoner, Robert Thomas Crossfield, stands indicted, together with three other persons who are not now upon their trials; namely, Paul Thomas Le Maitre John Smith, and George Higgins, for that they did maliciously and traitorously compass, imagine, and intend to bring and put our sovereign lord the king to death.—This indictment states, as by law it must do, those leading facts which are the evidence of that compassing and imagining, and in the language of the law are called the overt acts: that is, the acts by which the secret intention is made manifest. Those acts are required to be proved by two witnesses; i. e. by two witnesses to some one overt act, or by one witness to one overt act, and another witness to another overt act of the same species of treason.

The different acts which are charged upon this prisoner, and the other prisoners, from whence this charge of high treason is deduced are, first, that they, together with others; conspired, combined, consulted, consented, and agreed to procure, make, and provide, and cause to be procured, made, and provided, a certain instrument for the purpose of discharging an arrow, and also a certain arrow to be charged and loaded with poison, with intent to discharge, and cause to be discharged, the said arrow so charged and loaded with poison, from and out of, and by means of the said instrument, at and against the person of our lord the king, and thereby to kill and put to death our said lord the king. You will observe, that this is a special and complicated description; the overt act consists of a conspiracy to prepare an instrument of a particular description, and for a particular purpose: the particular description is, that it should be an instrument to discharge an arrow, but it is not every arrow according to this description, it is an arrow to be loaded with poison, which arrow is to be discharged by means of this instrument—this is the first overt act charged in this indictment.

The next overt act charged is, that these persons employed and engaged one John Hill to fashion two pieces of wood, to be used as models for making and forming certain parts of the said instrument from and out of which and by means of which, the said arrow was so intended to be discharged. This overt act does not go to the whole extent of the former, for it only charges the persons indicted with the particular fact of having employed Hill to make two pieces of wood as models for forming parts of the instrument, but still the instrument referred to is the same instrument as specially described in the former charge, and the purpose referred to is the same special purpose. It therefore amounts to this; that if they did not conspire to form the whole instrument with the arrow loaded with poison, yet that they did employ Hill to make two pieces of wood as models for a part of that instrument which was to be employed in discharging the poisoned arrow. It also adds that they delivered to John Hill a paper with certain drawings thereon, drawn and designed as instructions and directions for making such model.

The next charge is, that they consulted among themselves and others concerning their traitorous killing and putting to death the king by means of the instrument aforesaid, and how and where such killing and putting to death might be most readily and effectually accomplished.

This is so stated because if persons who conspire the death of the king, and had meant to do it in this particular way, by procuring such an instrument to be framed, had only once consulted how they were to bring it about, the mere consultation is certainly in law a good and sufficient overt act to maintain the charge of compassing the death of the king; this you see would rest upon consultation only.

The next charge is, that they employed Thomas Upton to assist in making the said instrument, out of which the said arrow was so intended to be discharged at and against the king for the traitorous purpose aforesaid; and that they delivered, and caused to be delivered to Upton, a certain paper with figures and drawings thereon, drawn and designed as instructions and directions for making such instrument, and also certain pieces, that is to say, two pieces of wood as models for the making and forming certain parts of the said instrument.

The next overt act is, that they delivered to Thomas Upton a certain metal tube to be used by him in the making and forming the said instrument, out of which the said arrow was so intended to be discharged.

These different overt acts have all of them a connexion in one respect or another with the particular instrument especially described in the first of the overt acts, which was an instrument to be used for the purpose of discharging an arrow, which arrow was to be

poisoned. But I suppose those who have the conduct of this prosecution, aware of the difficulty that there might be in proving that instrument in the precise form in which they have there stated it, and also that it was to operate by means of an arrow to be poisoned, have, in the subsequent overt acts, very much narrowed the description, and they have therefore contented themselves with stating, that these persons did conspire together to procure an instrument to be made, not saying of what kind, nor describing its operation, but an instrument to be made for the purpose of killing and putting to death the king, and they then follow that up with overt acts similar to those already stated, only referring to the instrument as described in this latter part of the indictment. In substance there are therefore two distinct charges, one a charge of their having been concerned in consulting about framing, and in framing either the whole or parts of the instrument specially described for the purpose of throwing a poisoned arrow, the other that they have been concerned in procuring an instrument, though perhaps not for the purpose of throwing a poisoned arrow, yet intended and calculated in some manner to procure the death of the king.

Gentlemen, this is the substance of the indictment, and the evidence on both sides has been laid before you, and it is a satisfaction to me to find that no question of law can possibly arise in the case, except it be a question whether there are or are not two sufficient witnesses to the overt acts charged, for as to the charge of compassing the death of the king, it is perfectly well understood; and what are and what are not overt acts of that charge, are also well understood, and it has not even been questioned whether any one of these overt acts, if proved, would be a sufficient overt act of that charge of conspiring the death of the king; they are indeed all of them acts directly and immediately conducing to the purpose of an attack upon the king's person, to the horrible purpose of deliberate assassination of our most gracious sovereign. I have now two duties imposed upon me; the first is, to recapitulate the evidence as correctly as I have been able to take it; the next is to point out to you for your assistance the application of that evidence to all, or to any of those overt acts, some or one of which must be proved in order to constitute proof of this indictment.

The first witness called on the part of the prosecution was John Dowding; he said, that in September 1794, he worked with a Mr. Penton, a brass-founder, No. 32, New-street-square; that on the 8th of September, he was called into the counting-house; there he found three men, one of whom was lame, and whom he has since found to be one Upton; they asked the witness whether he could make them a tube? he inquired what sort of a tube? they said it was to be three

feet long, five-eighths of an inch in the inside bore, seven-eighths the outside, and one-eighth of an inch thick: they said it must be quite perfect, and quite a smooth cylinder in the inside; and they asked what the price of it would be? he told them he could not tell: they asked if he could tell them within a few shillings? he said no, he could not: he showed them a piece of a cylinder, they said that would do provided it was thicker, and by being thicker it would be smaller in the bore: the witness said he must make a tool on purpose if they wanted to have it quite perfect in the inside, and he could not answer for what the expense would be; if they would tell him the use of it he should be better able to judge how to make it, and would make it much better for their use: the answer was from Upton, he said that that was a secret; but he said that the other persons seemed to join in what Upton then said; he said he did not undertake the job; he told them that he was busy, and it was not worth while to undertake it: he said they then produced a tube which they had before bought at his master's shop, which they returned, and took the money back, a small sum, I think about eight-pence or ten-pence.

He was asked upon his cross-examination as to his knowledge of the other two persons, he said he had never seen them before; that they all stayed in the place while he was talking with them; that there were women lackering brass in another room, but he does not know that any one of them went out to speak to those women; and there is no evidence of any thing of that sort; he said he could not charge his memory with any thing particular that was said by the other men.

The next witness, Joseph Flint, is a brass-founder, in Cock-lane, Snow-hill; he said, that on some day in the month of September, but he could not fix the day, after dinner, he was called down by his apprentice, and he found three persons present, one of whom was lame, he observed he limped as he went out: they asked for a long pistol barrel; he produced them a musketoon barrel, but they said that would not do: they did not want it plugged up at one end; he told them he supposed they wanted a strait cylinder; they said they did, that they wanted it to be five-eighths of an inch diameter in the bore, and one-eighth of an inch thick; they said if he would cast and bore it, they would finish it themselves: he told them he should not undertake it unless they brought him a pattern? one of them asked whether a rocket case would not do; he said it would, provided the ends were plugged up; he said at that time the length of the instrument was not mentioned: one of them asked the witness how long he would be making it? he answered about three days. He said the lame man seemed to be the principal, but that he was not the man who asked in what time it might be finished, therefore one of the other

men must of course have asked that question. He said, in September 1795, he saw Upton, but he could not take upon himself to say whether that was the lame man he saw at his house.

The next witness is James Bland, a brass-founder, in Shoe-lane, Fleet-street; he said, that in the month of September 1794, but he could not fix the day, two men came into his shop, that in about five minutes after they were gone out, a third came in, and asked where those two men were gone? the witness showed him which way they went, and that man followed them: he said that when those two persons were in the shop, they asked him for a tube, or a barrel; he told them if they wanted a barrel they must apply to the watch-makers, if they wanted a tube to the drawers; he said that they went away, and then it was that the man came in and asked for the two gentlemen, and followed them; he said that the third person he believes was Palmer; he told them they were gone down the lane, and he went that way; he did not then know Palmer; he saw Palmer since before the privy council, and he said one of the others was a lame man.

The next witness is David Cuthbert, who lives at No. 9, Greyhound-court, Arundel-street; he is a mathematical-instrument-maker; he said he knew Upton, he had called upon Upton to subscribe to the relief of the wives and children of persons in custody some time ago for high treason; that he had no memory of what had passed at that time. The second time he called to know how the subscription went on, and they had some conversation about the Corresponding Society. Upton, he said, was a watch-maker, and he gave him an invitation to come and see an engine of his, which was an air-pump and an air-gun; he said he explained them to Upton; that Upton came again next day with another person; he said Upton had displeased him with the turn of his conversation, and he did not like him nor his acquaintance. The other person talked of being fond of shooting, said he had met with an injury by the explosion of a gun, and had lost three fingers, but the witness said he did not look to see whether that was so or not, and there is not in the evidence any thing which has served to apply that circumstance to either this prisoner, or to any other person; he said that man handled the gun: Upton asked the witness whether he wanted a job; he said he had more business than he could do: he said he had no conversation with the other about the properties of the air-gun, and never saw that man since; he said he should not have known him if he had met him at the end of six hours; he does not know that he should have known him if he had met him a minute after, but he took him to be a much taller man than the man he afterwards saw at the privy council; that Upton, in his judgment, did not appear to be then acquainted with the properties of air.

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The next witness is Peregrine Palmer; he describes himself to be an attorney, in Barnard's-inn; he said he has been acquainted with the prisoner sixteen years, that he was a physician; that he had resided in a number of places during his acquaintance with him; that the last place he knew him to lodge at was Dyer's-buildings; that they were upon terms of great intimacy, and were both members of the Corresponding Society; he had seen him there, and believed he was a member—the witness himself was a delegate and chairman of a committee; he said he might have seen Crossfield there three or four or five times, that they were of the same division; he said he knew Upton; that in the beginning of September 1794, he accompanied the prisoner, Crossfield, to Upton's; he said that they all went together afterwards to a house in New-street, or New-street-square, which he thinks was a brass-founder's what passed there he does not know; Upton appeared to him to have some business with the brass-founder; they were there but a few minutes, but he can recollect nothing; as to himself he said there was nothing transacted by him, that it was Upton's business; he said that he had not the least recollection of what passed; he said he would not swear that nothing was produced to that man, but he does not know that there was; that from thence they went to another brass-founder's in Shoe-lane; he himself did not go into that house at first, they were in the house a minute or two before him; he went in to inquire after them, they were gone; he overtook them in the same street, and then they went to Cock-lane, to a person in the same line of business; they all three went into that house, and some directions were given by Upton about something in the way of Upton's business; he said he had no recollection of any thing that was said about a brass tube or a model, but that there might be such a conversation; that he does not recollect having the tube shown to him at the privy council; that he had seen Crossfield's writing, but could not say whether certain papers produced were of his hand-writing; he does not take upon himself to swear that they were; on the contrary, he says he is not sufficiently acquainted with the hand-writing to form any belief upon the subject; he said some papers were shown him at the privy council, he does not recollect that ever he saw them before; he said they were but a few minutes in Cock-lane, he recollects nothing that passed; he said they went afterwards to Hill's, a turner, in Bartholomew-close, he recollects Upton's giving some instructions to Hill, something of a model or a pattern was mentioned, and he thinks he produced a drawing as instructions for something that Hill was to do, but he cannot say whether it was left or not; he said he thinks that Upton made it at the time in the house; he has no recollection of any brass tube being produced there; he said he thought they

parted somewhere thereabouts, and that the meeting with Upton was accidental; he said Upton lived in Bell-yard, that he might have seen Crossfield once or twice at Upton's before that; the prisoner at that time lived in Dyer's buildings, and lived there at the time when Upton's information was given; he said that he and Crossfield went together soon afterword to Bristol, that it was many months before the proclamation was issued for apprehending Crossfield, he thinks it was in the month of October 1794; he said the prisoner had a wife, but he believes she did not reside with him in Dyer's-buildings; he said he left the prisoner at Bristol, as he understood he had some idea of settling there; that he came back to London again about the time of the witnesses being examined before the privy council; that he did not then lodge in Dyer's-buildings, nor does he know where he did lodge; he thought he received one letter from him from Bristol, but did not believe he had written to Crossfield there; he said he might see Crossfield after his return two or three times at his own chambers; he after that saw him no more till he saw him under examination at the privy council; he said Crossfield was much in the habit of coming to his chambers; they were upon terms of great intimacy; Crossfield was in an ill state of health at that time, and was forced to take large quantities of opium; that Crossfield was acquainted with Upton; he thought Crossfield became acquainted with Upton by seeing him at the Corresponding Society; he said he saw an electrical machine at Upton's shop; he said Upton became disgraced in that society, that Le Maitre, one of the persons now charged in this indictment, was particularly offended with him; he said he had attended the society in August and September 1794; he then stated the occasion of Upton and himself and Crossfield being together that day; he said that Upton had a watch of his to repair; he thinks he and Crossfield had dined together somewhere in the neighbourhood of Temple-bar, and he meant to call on Upton for this watch; he said he had no particular recollection who it was that spoke to them in New-street-square whether it was the master or the servant; that his reason for not going into the second house was, that he had a necessary occasion to stop; he said that he and Crossfield meant to have gone together into the city, and happening to call upon Upton for the watch, Upton said he was going that way, and would accompany them, which was the occasion of their being together that day; he said he saw Crossfield publicly about the time of Smith and Le Maitre being taken into custody; that he and Crossfield went soon after that to Bristol, that Crossfield had an intention three or four months before to go to Bristol, that he meant to analyse the waters, and if he found any success he thought of settling there; that he saw him every day while he

stayed at Bristol, and that he appeared there as publicly as he had done any where else; he thinks Crossfield remained at Bristol after him two months, and returned to town about the time that he, the witness, was examined before the privy council; he said, as well as he recollects, the last time he saw Crossfield, was on the last day he was before the privy council, in the month of January; that the reward for apprehending Crossfield was published a considerable time afterwards; he said, upon his farther examination, that when he was first examined before the privy council, he mentioned his knowing Crossfield, and undertook to the privy council to endeavour at least to find Crossfield; however, he says notwithstanding that he did not produce Crossfield at the privy council, he thought he saw him in the early part of the last day when he went to the privy council; that when he was first examined, he told Crossfield of the circumstance of his (Crossfield's) attendance being required at the privy council, and of his having said he would endeavour to produce him, but Crossfield said he was 'going abroad as surgeon to a ship, and that his staying in town might be the means of preventing his voyage, and therefore Crossfield did not choose to go, and he says he did not mention to the privy council his having seen Crossfield.

The next witness, John Hill, said he was a member of the Corresponding Society, of Division No. 6, that he knew Upton a little, and he knew Palmer; that Upton, Palmer, and another man, came to his house in Bartholomew-close, in September 1794; Upton asked him whether he could turn in wood? he said yes; he then asked him if he was ready to do a job for them? he said yes: Upton began to describe what he wanted; the witness said he did not understand him; that Upton then gave him a sketch, he believes the sketch which is now produced in evidence, and he thought it was made in his presence, and upon a piece of paper that belonged to him, and with his pen and ink; he asked Upton what it was for; Upton said it was for something in the electrifying machine way; he was to take it to Upton's house, and he would see him paid; he said the stranger did something towards making that sketch, what it was in particular he could not recollect, but he thinks he did something; that it was done principally by Upton's direction; he said he does not recollect that Palmer did any thing to it; he said a piece was to be made straight like a round ruler, and there was something to be done from it in brass work; he said he carried the models home to Upton's, three days after; he found him at cards, and delivered the models to him; this he said was about the middle of September; he said there were some imputations upon Upton in the Corresponding Society; that Higgins, one of the persons indicted, said something which affronted Upton, and they were about to in-

vestigate Upton's character, when he chose to save them the trouble by taking himself away; that Higgins said, as he went out, there he hops off: he said, that after Upton was apprehended, he one day called upon the witness; they were here going to enter into evidence of some declarations that were made by Upton, but I thought it not proper to receive that evidence under those circumstances.

The next witness was John Le Bretton; his account is, that he sailed in the Pomona, a South-Sea whaler, from Falmouth, on the Southern fishery, round Cape Horn; the prisoner came on board a week before they sailed from Portsmouth, which was the 29th or 30th of January; that the prisoner was surgeon, and was called the Doctor; he said he did not know his name; they sailed upon the 13th of February from Falmouth, and were taken on the 15th by a French corvette, and carried into Brest; they arrived there upon the 23rd; he said that when the list was made out of the prisoners to be sent on shore at Brest, the prisoner wrote his name Robert Thomas Crossfield, and went in the first number of the prisoners; that when he went away, he wished them a good bye, and said he was happy in going to France, he would sooner go there than to England; he afterwards saw him in the corvette; he said he heard the prisoner say he was one of those who invented the air-gun to shoot or assassinate his majesty: the witness asked him what it was like? the prisoner answered, that an arrow was to go through a kind of tube by the force of inflammable air, that he described it with his finger to be like one of their harpoons; he said that when this prisoner was to go home by the cartel, he then gave his name in H. Wilson; that he helped to make out the list, and he put down his own name H. Wilson: he also described himself in that list as having been captured in the Hope, and as being a passenger; he said that there were twenty-three men belonging to their vessel; that Mr. Charles Clarke was the captain, who likewise came back in the cartel: he was asked about Clarke; he said he saw him at Christmas, and he, as well as he recollects, was not examined before the privy council; he saw him afterwards at Mr. White's, and on board the ship, and at his lodgings in Wapping; he said he once saw him at Mr. Smith's, but that he did not then lodge there; that he saw him when he was fitting out his ship, and may have talked with him, but has no recollection of any particular conversation about Crossfield, excepting that he said he had been examined at the privy council; he did not inform him of the subject of his examination, and he says he did not ask him whether he had not overheard his conversation with Crossfield; that, you see, comes to be material, because Mrs. Smith has been called for the prisoner, in order to fasten a contradiction upon him with respect to that circumstance; he

said captain Clarke was never so inquisitive as to ask him what he had said upon his examination, nor did he ever tell him; he said he had not seen him above two or three times, and he was now out of England; he said that he was frequently in company with Crossfield at Portsmouth before they sailed; he was on shore with him twice on two different evenings: the witness said he was boat-steerer, an officer on board this vessel; he went on shore at Portsmouth to buy necessaries, and he said Crossfield appeared there publicly; he said the ship was loaded with casks of water and provisions, and the captain's private trade, and also a little private trade of some of the officers, what that was he does not take upon himself to know; they put into Falmouth by stress of weather on the 2nd of February; they sailed again on the 13th; Crossfield was never on shore at Falmouth, or at most but once; at first he said there were only their ship's crew on board the French ship after they were carried into Brest, and that they were all concerned in a scheme to seize the French ship, Crossfield and all; there were some foreigners on board who would not agree to it, and therefore the scheme failed; they first went into the roads at Brest; they had no concern with any other English prisoners till they were put on board the prison ship the *Elizabeth*; that Crossfield was one of those who were put on board her; he mentioned two other vessels lying near them, the *L'Acille* and the *Normandy*; that Crossfield spoke French, and sometimes served as an interpreter; captain Cleverton, the master of another ship, was on board the prison ship; he thinks Mr. Cleverton messed with Crossfield; there was also a captain Collins there; whether he was on board or not he does not remember; he was afterwards removed from the *Elizabeth* to the *Peggy*; that the *Active Increase* was lashed to them; that there were three prison ships lashed together, and that they were all on board; Mr. Cleverton was at the hospital for some time; that captain Yellowly commanded one of the cartels, and he said he knew that the prisoner's name was Crossfield, and he made no secret that he knows of about his name; he said their private trade was in a few trunks, some part of it was sold on board the prison ships, by the indulgence of the person who took them: that they permitted the crew to take possession of some part of the private property. He was asked whether he had not some words with Crossfield about it, he said no, and that he never heard of Crossfield's threatening to inform the under-writers of this transaction, about the private trade which was said to have been in this way embezzled, and which was supposed to be insured. I do not see that any thing turns upon that; there is no contradiction introduced.

Thomas Dennis, the chief mate of the *Pomona*, said, that he sailed in her from

Portsmouth; that the prisoner sailed on board that vessel as surgeon; that he went by the name of doctor; that he did not rightly know his name till he got into France; that he had never seen the prisoner before he came on board; that the night after they sailed from Falmouth, the prisoner said that if Pitt knew where he was, he would have sent a frigate after him; that Pitt was to have been shot going over Westminster Bridge, but had avoided it by going another way; that his majesty was to have been assassinated by a dart blown through a tube, and that he knew how the dart was constructed, and something he mentioned about a harpoon: he said, that when they were taken by the French, he shook him by the hand, and said he wished they might get safe to England, he was happy he had got out of England, and was going to France. This witness mentioned the circumstance spoken of by the other witness, that when the list of prisoners was delivered in at Brest, he delivered his name R. T. Crossfield, and said he had no occasion then to be ashamed of his name. When the list was made out for the exchange of prisoners, and the prisoners were to go to England, he said he changed it to H. Wilson, and described himself as being captured in the *Hope* brig, and this he did in his own hand; when the list was called over, he answered to the name of Wilson, and walked aft. The witness was afterwards called before the privy council, in order to give them information respecting this transaction.

Upon his cross-examination, he said, they got into Brest on the 22nd; that there was a plan to rise; he thinks Crossfield had engaged to be one; Crossfield was one of those who messed in the cabin; and Crossfield and the rest that were there were to seize the ship; he said that there were three prison ships together; the *Hope* brig, captain Falconer, he said, had been taken within a day or two after they were taken, and Mr. Cleverton was in her; he said that some of their private property was saved, nothing of his was insured; that captain Clarke might have something insured; what were saved were sold on board the prison ships; he said he had no words with Crossfield on that account, nor any quarrel, nor did they converse much; that his station was the deck, and the doctor's was below; that he had heard Crossfield had said it was owing to his negligence that the ship was taken; Crossfield had never said it to him; he said Crossfield was not removed from the vessel on account of a quarrel between him and Le Bretton, and there is no evidence of any such thing. He was asked about the state of their provisions; he said they had bad provisions, but with their money they could purchase good; he said there was a scheme for his obtaining his liberty, by getting a certificate that he was an American, and which Crossfield was inclined to assist him in; that Crossfield meant to get

his liberty by insisting that he was a naturalized Hollander; and that he wrote to Leyden for the purpose of getting the necessary evidence to support that pretension; he said Crossfield said he had interest enough in France to procure all of them their liberty; he said Crossfield had a good deal of levity about him, and talked and rattled a good deal.

James Winter described himself to be the owner of the *Susannah*, a vessel from Newfoundland to Spain, on board of which he was with his property, and was captured and carried into Brest; he was taken upon the 6th of December, and arrived at Brest upon the 13th and was on board the prison ship for some time; that upon the 30th of March they were put on board a cartel in Landernau river; that Crossfield came on board and dined, this was on the 2nd or 3rd of April; captain Yellowley introduced the prisoner by the name of Crossfield, but the prisoner laughed, and said that his name was not Crossfield, but Tom Paine; he said that after supper he sung seditious songs; then he said that he had shot at his majesty, but unluckily had missed him. At another time the witness asked him where it was that he had shot at the king, the prisoner said it was between Buckingham-house and the Palace; he said that this kind of conversation passed every day for five months the prisoner did not say with what weapon he had shot at him, but said he would show the witness something like a pop-gun, about a foot and a half long, made of iron; he said he had put poisoned darts into this gun, and had shot at a cat, and the cat expired in great agonies in a short time; that he said it would kill a man at thirty yards distance, and nobody could see that he had done it; that he repeated these kind of things fifty times; the witness said there were nine of them that dined together; that this sort of conversation frequently happened: that the prisoner shewed him in what manner this arrow was made; he said that when the arrow struck the part it was aimed at, the poison would come out of the dart; that Crossfield said he was the person who ordered the poison to be made up, and that he got it at a chymist's shop; that Crossfield said he had fired at his majesty, but did not say with the dart, but it was damned unlucky he had missed his aim; he said nobody was present when he showed the witness in what manner this arrow was to act, that it was in a private conversation between them; but he said once in August, afterwards he corrected himself to July, Crossfield said he hoped he should live to see the day when the blood should be over his ancles in the streets of London, of the king and his party; a gentleman present said God forbid, matters may be done more easy. Then the witness went back again to what he had stated before and said, that he went to the chymist's himself, and ordered the poison to be made up, and with that he had killed the cat; he said

Crossfield said that after he had shot at his majesty, he was obliged to make off to Portsmouth, where he had got on board a South-Sea man; that two of the king's messengers were after him; the witness said that captain Collins wished to have the cutting off the king and Pitt, and the parliament; that Crossfield said have patience, I hope to have the cutting off some of them myself by and by; he said that on the 27th of August, when the cartel left Brest, Crossfield said every thing is now settled to my satisfaction; one of the captains endeavoured to stop his mouth, and prevent him from talking, but he said the French had given him great encouragement; that from the 18th or 19th, down to that time, the prisoner had been very close; he said they were three days on their passage, and they landed at Mevagissey; that nothing passed in the course of the passage material. The witness went immediately to a justice of peace, and gave information; upon that information, he said a warrant was granted, but before the warrant could be executed the vessel was gone to Fowey, and there it was the prisoner was apprehended.

Upon his cross-examination he said, that he was fifty-nine years of age; that he had resided at Newfoundland; that they were part of the time on board the *Berwick*, captain Alexander, nine of them he mentioned, the two Byrons, Collins, and several others that came over in the cartel; he said he told the justice the names of those persons, and that they were of the society of Crossfield; he mentioned their landing at Fowey; he said Crossfield was apt to drink; that the company that used to mess with them must have known of the general conversation, but that he does not think that they knew any thing about the mention that was made of the dart, because that was in private. He was then asked whether he himself had not told a story of a hare, and he gave us some particulars of that story, and that certainly raises a considerable degree of doubt whether this man is perfectly and entirely to be depended upon, in respect to his capacity, the story was certainly a foolish one, though not absolutely impossible to be true; but he added to it, that there was a notion that the place was troubled, which leads to a suspicion that he himself conceived there was something supernatural in the event which he related. This would be a strong mark of a distempered imagination. You will recollect that a witness for the prisoner said, that Winter declared that the hare was a witch or a devil in the shape of a hare. That which dropped from this man himself, in the course of his evidence, concerning the place being troubled, connects very closely with what the witness related; and the whole, taken together, marks so strongly that this man's mind is not perfectly composed, that it must weigh against the credit of his testimony, even though there should be no reason to doubt but that he

means to speak the truth. This man has given very material evidence against the prisoner; but it can hardly be thought, having this cloud thrown over it, a sufficient foundation for a verdict in this important cause, between the king and the prisoner at the bar.

Richard Penny, the next witness, describes himself to be master at arms of the Daphne; he said that vessel was taken by the French, and he was put on board the Elizabeth; he said he heard Crossfield singing in his bed a song which occasioned his asking him some questions the next morning, as the song wished damnation to a king; he asked him what king he meant; Crossfield said the king of England; upon his remonstrating with him, Crossfield threatened to have him put in irons, and then he said he was one of the three that attempted to blow a dart at his majesty, in Covent-garden; that Tom Paine's works were what he would be governed by, and that if ever he arrived in England, he would attempt the like again: he said that when they were coming into Mevagissey, the prisoner said to him, young man, were not you on board the Elizabeth, he answered that he was; the prisoner then desired that he would take no notice of what was said on board the Elizabeth; the witness said he mentioned it at Portsmouth, in consequence of which he was sent to Plymouth, where he made an information; he said they were captured upon the 22nd of September, 1794; that Crossfield came on board in the month of March, and remained about a month aboard; that he messed with Dennis, captain Clarke, and others; that the mess consisted of seven; he said he recollects that on board the Elizabeth, Crossfield was once in close conference with the French officer.

The next witness is Walter Colmer; he is a person who was employed to apprehend this prisoner, and to convey him from on board the cartel at Fowey to Bodmin gaol; he said the prisoner was put into a post chaise, with another constable to attend him, and he swears that upon the road the prisoner told him that he would give him and his partner each a guinea to let him go, that they would only get a few shillings for carrying him to Bodmin; after that he offered them two guineas each; one asked him what they should do with the driver, the prisoner said if they would let him have one of their pistols he would soon settle that matter; he was asked whether the prisoner was not in liquor, he said that he might be a little in liquor, but he did not think he was much.

[The Chief justice being reminded by Mr. Gurney, that Colmer said, that when he asked for the prisoner, he answered to the name of Crossfield, added,] I should have stated to you that Colmer, in part of his evidence, said that the prisoner, when he was apprehended, answered to the name of Crossfield.

Elizabeth Upton is described to be the wife

of one Thomas Upton; she gave an account of having missed her husband from the 22nd of February last, when he went out; she said she never saw him afterwards, but that his hat was brought home by a waterman; she said he gave her a seal before he went out, and she believes, having heard nothing of him, that he is not now alive; she said that he was a sober man, she never saw him disguised in liquor; she knew Crossfield, she had seen him at her husband's house frequently; and also Palmer, she has seen him there in company with Crossfield; she said she thought she recollected having seen the two models, which are now produced, lying in her husband's shop, at the House in Bell-yard; she said she had known Hill; that something like those models were brought home by Hill one night; but she has no recollection of having ever seen a tube, which was now shown to her, nor the paper which has been produced: she now lives in Gray's Inn-lane.

George Steers lives in Gatwood's Buildings Hill-street, Finsbury-square; he said he happened once, though not a member of the Corresponding society to be at one of their meetings in the latter end of the year 1794, somewhere about the month of August, there he saw Upton, he observed Upton was lame: he observed that he held something in his hand, at first he thought it was a walking-stick, but it turned out to be no walking stick; there was a fellow clerk along with him; he asked Upton what it was. he did not give any answer; he asked for what purpose it was intended; Upton showed it him in his hand, he then perceived by the light that it was made of brass; that the tube which is now produced, is in appearance the same, but he cannot undertake to say it is the same.

William Henry Pusey said he was with the last witness at this meeting of the Corresponding Society; that Upton was there; he saw under his coat something which resembled that tube which is now produced; he asked Upton what it was; Upton pulled it farther out, but gave no answer, only shook his head; that the thing when produced, did not appear to him to be solid.

Edward Stocker, the other constable, who was not called immediately after the first, said that as they were conveying the prisoner to Bodmin gaol, he offered them a guinea a-piece, and afterwards two guineas a-piece, to let him go, and said it was better to let him go than to take a little money to carry him to gaol, and that he was man enough for both of them, by which I suppose he meant that the witness might make that excuse, that he had got away from them by superior force; Colmer asked him what they were to do with the driver, he answered, if you will give me one of your pistols I'll pop at him, and settle the matter; that he could give them a draft on some person at Fowey; the witness asked whether he knew any inhabi-

tant of Fowey, he said no, he did not know any inhabitant, but it was a person in Fowey, who would answer his draft; he cannot say that the prisoner appeared to him to be in liquor, but that he afterwards did fall asleep, and slept soundly a great part of the way; that they set out about nine o'clock in the evening.

Harvey Walklate Mortimer is then called; he is a gun-smith in Fleet-street, and has been near thirty years in the business; he has been used to the construction of air-guns: he has frequently constructed them in the form of a walking-stick; he says they will not take effect entirely without explosion, but in the open air; when the air has a free current you cannot hear it; in a room it makes a noise, like the clapping of a hand; that in a theatre it would make less noise than in a small room; that it has so little recoil, that if you were to hold it before your eye with a glass between you would not perceive that it hurt the glass, and he said a very accurate aim may be taken; he said the tube of an air-gun might be so constructed as to discharge an arrow. A drawing is produced to him of two arrows, one barbed, the other not; he said the barbed arrow might be so constructed, that the barbs might collapse, and so be put into this tube, and when forced out again, they would regain their position; the springs must be weak, but they would act upon a joint, and, being made weak, they might be pressed in; he says undoubtedly such an arrow might occasion death; he is shown those two pieces of wood; he said that they certainly might make a cylinder, in the form of the longest of those pieces; that the small end of the models mark the size of the bore, and that if this was designed for a piston to condense the air, it would be to be put on occasionally upon the air-gun, and he says that they might condense the air sufficiently to charge a brass tube with condensed air, so as to discharge an arrow three or four times without re-charging it; he was asked to look at the paper, and see whether he could take upon himself to say, that the models were made from the drawings in that paper; he said he could not take upon himself to say, from the appearance of the paper, that they were made from those drawings, that without something having been said, he should not have known for what that paper was intended, or what it was to represent; he said that they make now their air-guns in a neater form than this, in the form of a walking-stick; that the recipient for condensed air may be within the tube, and the condenser either within or without. He was asked as to the possibility of some matter being enclosed in the barb of the arrow, and which, though the arrow was discharged, might not be lost till it struck the object, and then it would part with that matter; he said, he believes that an arrow might be so constructed; he went into a more particular de-

scription of his air-gun, which I do not think extremely material, and I did not encourage him to go farther into it, because I did not wish it should be very particularly taken down to inform the world of that which it is better the world should not know; but he said that which is material to the subject of our inquiry, which is, that upon looking at these models, he does believe that they are models of part of an air-gun; he said that if he had not seen them along with the tube, he should not have been so well satisfied, but that it is very satisfactory to him, seeing them along with the tube, that that was the purpose for which they were constructed, but that without the tube it would be his belief that they were intended as parts of an air-gun. That, you see, is very material, because the very point of the overt act is, that these were models of part of the instrument, which might be used for the purpose expressed in the overt act, namely, to destroy the king.

Mr. Ward was then called; he said that upon the 12th of September, 1794, he saw the paper which has been produced, which has a figure of a barbed arrow upon it, in the possession of Upton, at Upton's own house; and he thinks he saw likewise the other paper, but he did not see the tube. On the Saturday, which was the next day, he went to give information of it; and he saw Mr. Pitt upon the Wednesday following, when the information was given.

Mr. Palmer being again brought up to be asked a question that was omitted, said that Crossfield's circumstances were bad; that his property had been assigned for the benefit of his creditors.

Gentlemen, this is the evidence on the part of the prosecution.

On the part of the prisoner James Parkinson was the first witness called, who described himself to be a surgeon and apothecary in Hoxton-square; he said that in August 1794, he was a member of the Corresponding Society; that Higgins and Smith were members of the general committee; that enquiries were instituted in the committee by Higgins and Smith at the request of the committee of Correspondence, into the character of Upton, upon a charge of having set his house on fire; that there was a meeting, at which Upton was present; I think this was all that he said upon his original examination.

Upon his cross-examination, he was asked whether he had not been at some time in possession of a paper intitled *La Guillotine, or George's Head in the Basket*; he said he had such a paper, but that he did not receive it in the society; he said he had heard that *Le Maitre* and Upton were reconciled; he said that he did go to Hill after these people were apprehended, to hear all that he could collect, in order to give the privy council all the information he could; that he never heard of any quarrel between Upton and Crossfield, and that Hill expressed uneasiness about having turned these models.

The next witness was John Bone, who lives at No. 8, Weston-street, Southwark, a muslin clearer; he said he was a member of the Corresponding Society in the months of August and September 1794, and a member of the general committee; that Le Maitre, Smith, and Higgins were members; and that there were disputes between them and Upton some time after the commencement of August; that they originated in Upton's bad character; that Higgins and Le Maitre were taken up upon the 27th or the 28th of September: that Smith and Higgins had attacked Upton's character, and there was a great dispute with considerable violence, between Le Maitre and Upton, he believes that was on the 4th of September; that it threw the whole assembly into great agitation; that a letter had been sent in, reflecting highly upon the society; that when it was known that it was written by Upton, and he confessed it, Le Maitre was very severe upon him; that he called him a man, considering him as unworthy the name of a citizen; he said that Upton threatened to be revenged of Le Maitre; that Le Maitre said to him if he had any thing to settle, it would be better to do it at another time, and he gave him his address; the same evening Higgins moved, in the general committee, a vote of censure upon Upton, which was discussed, and Upton going towards the door, Higgins said that if they meant to do any thing upon the vote of censure they must be quick, for that he was hopping off; this put Upton into a great rage, and he called Higgins a wretch, for reflecting upon his natural infirmity; that Higgins made answer, perhaps I ought to tell you you lie, but it shall suffice at present to say I did not mean it so; Smith said if Upton's name was kept in the printed list of the Society his name should not continue there; and that the night before these people were apprehended the list was ordered to be published without Upton's name.

John Huttley, a watch-spring maker, in Great Sutton-street, Clerkenwell, said he saw Upton in September 1794; that their conversation turned upon Higgins, Le Maitre, and Smith having been apprehended. Upton said it was their own fault, they had made free with his character.

William Brown said he knew Upton; that in September 1795, he asked him concerning what Crossfield was detained for, Upton said he could not tell; he asked if he knew what was the chief accusation against him, Upton said he did not know; he asked him if he knew Le Maitre, Higgins, and Smith, Upton said yes, too well, they were three damned villains, and had used him in the most villainous manner; that they still continued to hurt his character, and that they had attacked him in the street, calling him an informer, and brought a mob about him, and that if they did not desist, he should certainly use some means; he told Upton that he must

make some allowance, considering the ill usage he had given them, by laying against them an accusation apparently unfounded; Upton said he was unacquainted with the former part of the story, and that he would relate the whole; that prior to all this business there had been a subscription for the families of the state prisoners; that subscriptions were received at his house as well as at others; that Higgins, Le Maitre, and Smith had accused him of being a thief, and an incendiary; that the society had refused to give him a fair trial upon it, and that they still continued abusing him in every public company; the witness told him such accusations as those, in his judgment, could not arise from nothing at all; that Upton then said he would tell him what it alluded to; he had once a house in Cold Bath Fields, which was burnt down; he was advertised, and a reward offered for apprehending him; that he agreed with a friend of his, that his friend should produce him, that they might get the reward, and when they had got the reward the Phoenix Office could make nothing against him, and he appealed to the witness whether, as he was acquitted in the eye of the law, any man ought publicly to accuse him. All this goes but a little way, because there is nothing that points directly one way or the other to the question, whether any charge which was brought against Le Maitre, Higgins, and Smith was or was not well founded; he only gives the reasons why he is at enmity with them, and why he thinks they have used him ill; and, as far as he was concerned in it, a sort of apology for his bringing forward a charge which, whether true or false, perhaps otherwise he might not have done.

John Cleverton said he was a prisoner in, Brest, at the time Crossfield was there, on board the same prison ship, from the 19th of February to early in May: he does not recollect any declaration respecting the king, but he has frequently heard Crossfield sing republican songs; that he never heard him make any declaration as to any plot there was against any body; that there were other captains of vessels, captain Clarke, captain Bligh, Mr. Dennis, a man of the name of Denton, and Mr. Widdiman, who used all to mess together; he said Crossfield was a very jolly fellow; that the sick prisoners were sent to the hospital; he himself went to the hospital on the 19th of May; that he came over in the same cartel with the prisoner; he said he knew that in the month of May the prisoner signed his proper name Crossfield, because he signed it to some instrument of his at his request; they used to call him doctor; there was no particular intimacy, he said, between Crossfield and Dennis, or Le Breton: the witness said that they afterwards landed at Fowey; that to the best of his judgment Crossfield appeared glad that he was got over; he said he himself, at the time he was taken, was going to the Canaries, as agent to a

house in St. John-street, to collect wines for the government; he described Crossfield as a man who drank hard; he said he does not remember hearing Crossfield say any thing of having settled any affairs in France to his satisfaction; he does not know neither that he put the name of Wilson into the list, but has heard that he did; there were no quarrels about republican principles; then he is asked whether a song that is shown him was one of the songs Crossfield sung? he said he never heard him sing that song but once or twice, the chorus in particular, he said, he had a recollection of; that song was read. Gentlemen, I shall not repeat it to you, it is not at all essential to the cause, and it were better that such songs should have no circulation; a more flagrant seditious song, aiming more directly at the whole constitution of the government of this country, consisting of King, Lords, and Commons, could not have been composed: it was truly said by Mr. Attorney General, that it was an epitome of every thing that could be imagined to be seditious; though the name of our king is not in terms mentioned, yet Mr. Cleverton, if he had recollected himself, could hardly have thought himself justified in saying that this man had never said any thing reflecting upon the king.

Anthony Collins, the next witness, said he was a captain of one of the prison ships, he explained that by saying that they were cartel ships that were in the river, and the French converted the cartel ships into prisons; he said that he heard there was a medical man on board one of the other ships, and therefore he invited him on board his ship, and that turned out to be the prisoner Crossfield; that he considered himself as much indebted to him for his care and attention in his profession, and he thinks he saved the lives of fifty or sixty people by it? he messed in the cabin with him; there were the two Byrons and some others; he had not known him before; he says, for want of better employment, they drank too much; he solemnly avows he never heard any thing of plots against the government; that the witness, Winter, was sometimes at that mess, and told ridiculous stories, one was, the catching the devil in the shape of a hare; he took the hare for a devil, and was very much displeased when they attempted to contradict him; and he said he was the common laughing stock on board; he believed he was somewhat flighty, whether from the loss of his property (for he understood he had lost a good deal of property) or whether the effect of his imprisonment he could not tell; he walked about in the night talking to himself, and slept very little; he never had any conversation with Winter about Crossfield: the witness lived mostly with Crossfield; he said Crossfield mentioned the derangement of his circumstances, but did not mention the occasion of his leaving England, or whether that was the occasion; he sung songs, but some of them against the government; he

does not recollect any such song as that the chorus of which is, "Plant, plant, the tree;" he did hear that Crossfield put his name down in the list, when they were to be exchanged, H. Wilson, it did not surprise him at all, having communicated to him the embarrassment of his circumstances he ascribed it to that; he said his conduct was uniformly that of an orderly and good subject; that he reprobated the war, and called it an unjust war: he said he has often heard him say that the commandant had offered to let him stay, and to give him an establishment to superintend the hospitals, but he declined it, rather wishing to be at home, and seemed to rejoice in returning home; he said he never saw Mr. Cleverton above once or twice, for he was part of the time on board one of the other ships, and part of the time at the hospital, sick.

Elizabeth Smith is then called, who is a widow, living at No. 17, Great Hermitage street, Wapping, where she has lived for the last eight years, having lived in Red Lion-street for the seven preceding years; she said she has known Crossfield five years, that he was very often to and fro, that he was a man of levity, but by no means of a harsh and severe temper; she knew captain Clarke of the Pomona, she has known him two years; she had also seen the witness, Le Bretton, that he was before the mast, with captain Clarke; that he used to come to captain Clarke; she remembered his coming after his return; he told her she might expect captain Clarke soon, for he had been examined at Guildhall or somewhere. Le Bretton said to captain Clarke, that he had heard Crossfield describing a gun to him, that he, Clarke, was present, which Clarke denied. Le Bretton said, several times, he hoped he should hang him. Crossfield, she says, lodged with her at three different times, under the name of Crossfield; that the last time he lodged with her was about a month before he went out; she says on Christmas day Clarke dined at her house, and Crossfield dined with him; that was the day before Clarke went on board his ship; that Crossfield did not join the ship for five weeks after, at Portsmouth; that he went by the name of Crossfield while at her house, and she apprehends he went to the Change, and other different places, with the company in the house, particularly captain White: one day Crossfield came in when captain Clarke was speaking to some gentleman to recommend a surgeon, and Crossfield said perhaps he might go with him: she said Crossfield was a good natured man, who would hurt nobody; she denies that she ever asked Le Bretton to be favourable to Crossfield, and that she never said truth was not to be spoken at all times: she said she never spoke either to Le Bretton or Dennis in that manner, that she had not seen them since Le Bretton was about the house.

They then call five witnesses to the prisoner's character.

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Mrs. Watson is the first witness; she said Crossfield lodged at her house in Dyer's-buildings, that he lodged there by his own name; that he came on the 26th of July 1794, and staid two months, that he kept nothing locked up, that he was a very careless kind of man, but behaved extremely well; she never saw him afterwards, and no inquiry was ever made about him.

Mrs. Beasley said, she had known him four years, he had the character of a humane good natured man.

Mr. Wyld, a surgeon, in the Kent-road, said, he had known him three years, and gave him a very good character for his good nature and humanity.

Mr. Wilson, a surveyor, in Dorset-street, said he had known him from a child, that he was an exceeding good man, and he never thought he could commit any crime.

Mr. Hepburn, a surgeon, in Great Hermitage-street, said he has known him four years, he had attended the family where Crossfield lodged, he thought him a light, easy, good-natured man.

They then, on the part of the prosecution called up Thomas Dennis, and John Le Bretton, in order to confront Mrs. Smith.

Thomas Dennis said, that Mrs. Smith made inquiries of him what he knew about this charge against Crossfield? and she said, she hoped that he would not declare any thing to hurt him. He said, there were warm disputes at dinner, that there were three or four captains of ships present: she said she would say any thing to save him; and that captain Smith, who was present, said, Mrs. Smith you ought to be ashamed of yourself to say such a thing. He said captain Clarke, captain Smith, and a young gentleman that had apartments there, whom he believes to be a wharfinger, were present at this time.

John Le Bretton said, that he very well knew Mrs. Smith; that she asked him what he had said, and she said she hoped he would not say any thing to hurt the prisoner; that he told her he should speak the truth, and did not know whether it would hurt him or no; to which she answered, that the truth was not always to be spoken; so that you see here arises a question, whether Mrs. Smith has materially impeached the credit of Le Bretton, or whether Le Bretton and Dennis together have materially impeached the credit of Mrs. Smith, that is a subject which is entirely for the consideration of the jury: when you are ascertaining what is the true state of the facts in evidence, you must make up your minds as to that, whether you will consider Mrs. Smith as having materially impeached the credit of Le Bretton, or whether you think upon the result of the evidence Le Bretton and Dennis together have impeached her credit; if it be true that she tampered with these witnesses, and said she would say any thing for this man to save him, instead of impeaching the credit of the witness, she is her-

self discredited; all that I shall say upon it is, that this man Dennis, who I do not find is impeached at all by her evidence, does aver that it was so, and does boldly appeal to persons who were present at the time, who at least hereafter, if not now, might contradict him if he did not speak the truth.

Gentlemen, I have now gone through the evidence; I told you I should first recapitulate the evidence, and then endeavour to inform you in what manner this evidence applies to establish the whole or any part of the overt acts contained in this indictment, and there appear to me to be two overt acts, or rather two different sets of overt acts, varying only as to the description of the instrument, one being coupled with the poisoned arrow, the other not; in other respects it is in truth but one set of overt acts, they are both of the same nature, they both charge a conspiracy to prepare an instrument to destroy the king, and they both of them charge the employment of Hill to make models for a part of that instrument; and either of them, if they were made out satisfactorily, would certainly be sufficient to support this indictment.

First then, you are to consider whether there is any evidence before you of this conspiracy to procure the instrument described to be made, being described two different ways.

You are next to consider (if you are satisfied that there was a conspiracy in which this prisoner was involved to prepare such an instrument), Whether the purpose for which it was to be prepared is sufficiently ascertained by the evidence.

Thus far is clear, that three people, of whom one was by the positive evidence of Palmer fixed to be the prisoner Crossfield, did go, upon the day mentioned by the witnesses, I think one of them said the fourth of September, to three different brass-founders, and did there apply to have a brass tube made, of a particular description, which they gave when they went to the first man; and though they desired to have a cylinder very correct, and very exact, yet they did not think fit to disclose the occasion for which they wanted this cylinder, in which there is certainly an air of mystery. It appears that when they were at another brass-founder's, they said that it was wanted for something belonging to an electrifying machine belonging to Upton; if it had really been wanted for that purpose, one can hardly see a good reason why there should be any secrecy when they were at the first brass-founder's.

It appears too, that three persons, one of whom is sworn to be Crossfield (the lame man, Upton, is, I think, spoken to by all of them) went afterwards to Hill's, to get a model made for part of something; perhaps when you compare that part of the evidence with the evidence arising from the application to one of the brass-founder's, it may be explained how they came to apply for this wooden model;

you recollect one of the brass-founders said, he could not undertake to make it unless they would produce him a model, or a pattern; they asked him whether a rocket case would not do? he said it might do if it was closed at the ends; whether that would or not have done I do not know, but they did not agree there, and the question is whether that did not suggest the hint for getting something done in wood from whence the brass-work might be cast, which was afterwards to be made use of? three persons went upon this errand; there is a question in the evidence whether Crossfield ought to be taken to be consenting to what was done at that time, supposing he was there; and the witness, Palmer, has certainly introduced circumstances to render it doubtful, though all these three persons were present, whether more than one of them took any part, for he would have you to understand that it was an accidental meeting of the three; [that Crossfield and he were dining together, that they went to Upton's only for the sake of his getting his watch, and that it was merely by accident, they being going into the city, that they walked with Upton; and perhaps the situation of the different places they went to may in some measure correspond with that, for they seem to have begun in New-street, then to have gone to Shoe-lane, and then to Cock-lane, which seems to be all in one direction.

On the other hand, though Palmer has said this, there certainly are circumstances fit for your consideration, to fix if not upon Palmer, at least upon the other two, the having a good deal to do with the transactions at these brass-founders, and particularly at Hill's; one of the brass-founders told you that one of the men, who could not be Palmer, for he disavows it, and who was not the lame man, asked in what time the thing would be finished, which could be nothing to him, unless he had something to do with the general purpose for which they went there; and as to the transaction at Hill's, both Hill and Palmer say that this man, who turns out now according to the evidence of Palmer to be Crossfield, did take some part in making the sketch by which Hill was to work; now that seems very inconsistent with the notion that it was purely an accidental meeting, and that they were there only as companions to Upton, who was doing his own business, without any participation whatever with them in that business; to be sure it is not absolutely impossible that when an awkward sketch was making, a man who was not immediately concerned in it might take a pen and make a stroke; however, it is a circumstance that is to be weighed in the case upon the whole of the evidence, as tending to show that these three persons were at all these places for the purpose of procuring, first of all, this brass cylinder to be made; and in the next place procuring the model to be made, from whence a brass cylinder was to be made by some other person.

Supposing you see reason to believe that this prisoner was consenting to that which was doing at these houses, principally by Upton, that he was there consenting to it, and taking part in it; the consequence would be that then there would be evidence for your consideration to prove that there was an agreement by the prisoner among others, for the procuring an instrument to be made, which constitutes a part of one of the overt acts; and that there was by the prisoner, as well as by others, an actual employment of Hill to make a part of this instrument; another, and the most material part of the overt act is the purpose for which it was to be made; the whole of the overt act must be proved, and the evidence will or will not amount to such proof, as it shall or shall not turn out to your satisfaction, that the purpose for which this instrument was to be made was, to assassinate the king; as to which this part of the evidence has no application; you are referred therefore to declarations which have been made by this prisoner when he was out of this country, when a prisoner on board a prison-ship, as evidence sufficient to satisfy you for what purpose he had agreed with the others to get this instrument prepared, and to get Hill to execute the model.

The evidence that you have heard, is from four different witnesses; John Le Bretton, Thomas Dennis, James Winter, and Richard Penny. It has been observed with great truth that the accounts are not uniform, that sometimes he spoke of having attempted to assassinate the king, at other times of having invented an instrument for the purpose of assassinating the king, at other times of having actually shot at the king, and of an intention to shoot at him; these declarations unquestionably are not uniform, they are also open to the objection that they are very extravagant in their nature, probably some of them false; that it would be excessively absurd in a man in the situation of the prisoner to use such expressions, if he were guilty; almost as absurd as to use them, if he was not guilty; and it would be very difficult to imagine that he should do that. They assist that observation by what is very fairly argued for the prisoner; that a man of a light wild cast, subject to be intoxicated, a talking rattling man, if he did say any thing of this sort, would hardly be supposed to be serious in what he said; or mean to expose himself to a charge of so heavy a nature, as that which these declarations will import. You will be disposed to give a great deal of weight to the observation which arises upon the nature of those declarations; on the other hand, undoubtedly there is a most remarkable coincidence in every one of these declarations, with respect to the nature of the instrument which he talks of, and the manner in which it was to be used; for the accounts given by all the four witnesses speak of a dart to be blown through a tube, and the use of it to be as expressed in these

declarations, for the purpose of assassinating the king.

A man may have a bad habit of talking very wildly and extravagantly, but to account for these declarations without imputing guilt, there must be an impression upon the mind of the prisoner almost to insanity; otherwise, how is it to be believed that he, an innocent man, should always recur to this, that this should always make a part of, or be referred to in these declarations, that there was an air-gun he had invented, which was to operate by the means of throwing a dart by the effect of condensed or inflammable air.

Gentlemen, those declarations have been as it seems to me improperly called confessions, they are not properly confessions which import a particular charge first made, and an acknowledgment of that charge; they are declarations made by the prisoner at different times, upon different occasions; which declarations referring to former existing facts, are the explanation and connexion of those facts, which serve to make those facts intelligible; whatever question may have arisen at any time respecting the admission of confessions in high treason, I take it that there never was a question made whether when facts had been stated, the explanation of those facts might not be taken from the mouth of the prisoner. According to the rules of evidence what a prisoner has said respecting a particular fact is admissible evidence, not in the nature of a confession, but as evidence of the particular fact; and that it is therefore agreeable to the general law of evidence to receive such declarations in all cases whatever, in order to explain and to establish the true state of any matter of fact which is in dispute, or the subject of inquiry before a jury; as far, therefore, as regards the admitting these declarations of this prisoner as evidence for your consideration, I have no doubt in stating it to you, as my opinion in point of law;—if my brother and Mr. Recorder see any reason to hesitate upon it, they will give you their opinion;—but I see no reason to doubt, but that all these declarations are good evidence in law, in order to explain the facts that had been before stated, and to give them their proper sense and their proper bearing; and the only question will be as to the effect of them, and whether they do or do not sufficiently satisfy you (it being first established to your satisfaction that this prisoner was one of those who were concerned in going to these people, and using the means to get an instrument prepared, both by inquiry for a cylinder, and also by bespeaking a model), I say, whether they do or do not sufficiently satisfy you for what purpose that cylinder was procured, and for what purpose those parts of that instrument were ordered to be made; whether for the purpose, that when the instrument was completed, it should be used for the dangerous and traitorous purpose imputed by the present indictment.

Gentlemen, this is to be inferred princi-

pally from the substance of the evidence of the prisoner's declarations; but on the part of the prosecution they have also endeavoured to strengthen that inference, by showing you in evidence, what the conduct of the prisoner has been; and they say, and they say truly, if they make out that the conduct of the prisoner has been, that he has either originally withdrawn himself from justice, or that he has taken pains to secrete himself from justice, after he was apprehended; that those are circumstances which do at least infer a consciousness of very great guilt, and if there be no other reason assigned for the conduct of the party, very much corroborating and supporting the charge of the particular guilt that is imputed to him.

You have heard a great number of observations upon the particular parts of the evidence, as to the prisoner's conduct, respecting his originally withdrawing himself from this country; it will be a point for you to satisfy yourselves about, whether he did withdraw from this country under the apprehensions of being involved in this charge, or whether he withdrew from this country merely on account of the pressure of his circumstances; they conclude on the part of the prosecution, that he withdrew from this country on account of this charge, and they do it upon the ground principally of Palmer's evidence. Palmer having represented that he and Crossfield went away to Bristol soon after Le Maitre and Higgins were taken up, and that though they returned again, he never returned to his old lodgings, but went to Wapping; and that he kept the place where he lodged a secret, even from Palmer, which is a circumstance that is a little difficult to account for, considering the intimacy he admits to subsist between them, considering that Palmer communicated to Crossfield that the privy council had made inquiry after him, and that he had undertaken to produce him before the privy council, and he knew that Crossfield did not choose to go before the privy council: they infer that the true reason for his not going to his former lodging was because he wished to secrete himself; that the true reason for his going afterwards on-board the ship was because he wished to get out of the reach of the privy council; the circumstance of Palmer not knowing where he lodged, can hardly be accounted for in any other way, than by Palmer's not wishing to know it; to be sure if he had known it, it would be more difficult to avoid those inquiries that might be made after Crossfield, he having undertaken to produce him.

On the other hand, opposed to this, is the account given on the part of the prisoner by his witnesses, that in truth he originally withdrew from London only in order to settle at Bristol if it should appear eligible; that he came back to London and lived publicly at Wapping, using no means to conceal himself, till an opportunity offered by accident of

going on board captain Clarke's ship, and that he went on board because he could not stay in this country, having been obliged to assign the whole of his property for the benefit of his creditors. The fact, with respect to that, depends partly upon the credit due to Palmer's evidence, and more especially to Mrs. Smith's evidence, because she took upon herself to say, that Captain Clarke mentioned his wanting a surgeon in the presence of Crossfield, and that Crossfield said perhaps he might go with him—the credit of Mrs. Smith will depend upon whether you think she is a fair witness speaking the truth, or whether you think she comes under that bias imputed by Dennis in particular, and the other witness, that she comes resolved to say whatever she could for the benefit of this man; that is a point entirely for you to settle; if this man withdrew from the danger that he thought himself in of being apprehended under this charge, that is a strong corroboration of all the rest of the evidence. On the other hand, if he withdrew from the mere pressure of his circumstances, he will avoid all the inferences that have been made from his conduct in that particular. Then as to the rest of his conduct, he appears by the evidence of one of his own witnesses, when he was on board the prison-ships, to have been a man of dangerous principles by the language he held, by the republican songs which he sung, and above all by that republican song which is laid before you. Gentlemen, it would not be fair in point of argument (and in times like these we feel the full force of the objection), to draw a particular conclusion in proof of a particular offence, from a man's being tainted with such unhappy principles; therefore, upon this evidence I lay very little stress. Upon the whole of the evidence of the prisoner's general conduct while he was abroad, it does not appear to me to afford any answer to this charge. When it is urged to be a strong corroboration of it, perhaps it hardly goes quite to that length, being, in the result of it rather evidence of character, than of matter of fact referable to this charge. When the prisoner returned to England, and when he was apprehended in consequence of Winter's information, his conduct seems to be more difficult to be reconciled with his innocence, and there is no contrariety in the evidence with respect to that, for it is established against him that he would have bribed an officer to have let him go; and he talked in a way which leads one to suppose that he would not have hesitated to have done something worse, in order to have got out of the custody he was then in.

This cannot be accounted for by supposing he was under any apprehension of being sent to gaol by his creditors, for there was no reason to suppose this was a charge made against him by creditors; on the other hand, the circumstances plainly denoted he was under a charge of a very different nature.

Constables, not a common officer, came for him by the name of Crossfield; he certainly answered to the name of Crossfield; it would have been vain indeed to deny his name at that time. Under those circumstances, he made that offer, which certainly is imputable to him as evidence of a consciousness of very great guilt; whether it applies directly to the support of this charge against him which is now under your consideration is for your judgment.

Gentlemen, considering the declarations of the prisoner as evidence sufficient in its nature to prove the use and application of the instruments that were proposed to be made, I am of opinion that, upon the whole case before you, there is evidence proper to be submitted to your consideration to prove the two overt acts to which I have applied the evidence on this indictment. Though I state to you that there is evidence for your consideration, it would not be for me, after having heard his defence and commented upon it, to state, that the evidence is sufficient to satisfy your consciences—that is your business; I only say, that in law the evidence will be sufficient to be left to your consideration to prove the overt acts, unless he gives a sufficient answer. Now, then, the question will be, what answer the prisoner has made: he has answered partly by very able observations from his counsel, partly by evidence. The learned counsel (Mr. Adam) who opened his case told you, that he brought with him into this cause no other duties than those of the advocate—I think he did not do himself justice when he said that, for I think from his manner of treating the subject, he brought with him the duties of a good subject and of a good citizen; one whom nothing could tempt to endeavour to sap the foundations of the law and the constitution of the country under which we live; he admitted distinctly that the only question was, whether the parties were guilty of the fact,—whether any of the overt acts were sufficiently proved. To the first and most general observation made for the prisoner, that as the crime is enormous, and dreadfully enormous indeed it is, so the proof ought to be clear, I most cordially subscribe.

As to the particular observations that were made upon particular detached parts of the evidence I shall leave them to your consideration with only one observation upon them, which is, that observations upon detached parts of evidence can seldom go for much, because the fact that results is not from any one particular piece of evidence, but it is from the whole evidence taken together—from the chain of circumstances which a great number of facts given in evidence do ultimately form; from thence most frequently the fact results which is the material proof in the cause, it is very rarely the result of any one particular piece of evidence, and therefore I cannot admit that it can properly be said that any thing which passed at the first brass-

founder's, and at the second, and so on; conveyed no proof? it certainly did convey proof which was material, but only material because it was a link in the chain which was afterwards to be formed upon which the general result was to be taken. You have certainly been addressed with a great many very proper and weighty considerations upon the nature of the declarations, of the confessions as they were called, of the prisoner; you have heard them, and will give them all the weight they deserve. I am inclined to go as far as I possibly can, with respect to all possible allowances that can be made for such declarations as are here given in evidence, allowing for the possible mistake of the party who made these declarations in point of language and expression, and allowing for mistake in point of apprehension of the party who hears the declaration; with all these allowances still the question will be whether, in respect of the coincidence which I have observed upon, you can explain the whole of these declarations, and avoid making the conclusion from them, that this man did distinctly acknowledge that he was one of the three that had contrived an instrument which was to be employed for the purpose of assassinating the king. If you are of opinion that these declarations, upon the strength of the observation made by the counsel, have not sufficient weight in your minds, and do not satisfy your consciences, of course, without going farther, there would be an end of this case; because, undoubtedly, the case rests both upon the credit and upon the effect of those declarations made by the prisoner: if the observations made by the counsel should not have sufficiently explained away these declarations, you will then consider how far the facts laid before you in evidence on the part of the prisoner will assist these observations, or will defeat the effect of this evidence.

They begin by calling to you witnesses to prove that the whole of this charge originated in malice, conceived by one Upton, who is not here, against Higgins, Le Maitre, and Smith, in consequence of a quarrel that they had in a club, which they called the London Corresponding Society; and they have certainly given evidence that there was a quarrel, which proceeded to a considerable length; it is enough, without going into the particulars of it, to state that there was such a quarrel; but the difficulty in this part of the case is, supposing that this was clearly established, (and let it have what weight it will when those persons with whom this man is proved to have quarrelled shall come before a jury to be tried), what application can it have to the present case? because, if you are to suppose this whole charge originated in that quarrel, what is to become of all those circumstances which have an immediate application to the prisoner Crossfield, with whom Upton has not quarrelled. Recollect the observation which was made by the attorney-

general, and which does bear directly against this prisoner, because with him there was no quarrel, that it would be the strangest thing in the world if all these circumstances, which are in evidence against Crossfield, should have happened by accident, Crossfield having no manner of implication in the business; and that he should have made any of these declarations which are in evidence, when in truth there was no bottom at all to any part of the case—when this whole business originated in a quarrel between other people; if the case were otherwise, and there was really a foundation for the charge, but the charge had first been brought against Higgins, Le Maitre, and Smith, in consequence of a quarrel, that would make the whole case intelligible. The attorney-general's observations certainly deserve weight; for it might be, that though Upton brought forward this charge in order to vent his malice against these people, yet that it was a charge founded in fact, in which this prisoner was implicated: how to reconcile it to that which is now suggested, that it is all invention is to me, I confess, totally impossible; if you can do it, he will have the advantage of it.

For the purpose of explaining the conduct of Crossfield at Brest, and in his passage home, they have called two witnesses, of the name of Cleverton and Collins. I feel it difficult to state to you any direct result from that evidence; in truth the two witnesses do not agree in their representation of this man's conduct;—Cleverton admits him to have gone strange lengths, though he never happened to hear any of those things which the other people have charged him with having said: Collins, on the other hand, represents him as an orderly decent man, discovering no enmity, no aversion to the government simply blaming the war, and he certainly speaks of him handsomely in other parts of his conduct, at the same time that he was in his private character light, apt to drink and to rattle, but upon the whole he describes him as an innocent subject, and as a man in some respects of great merit: these two witnesses, therefore, differing a good deal in their testimony, it is difficult to draw any particular result from their evidence applicable to this case; the utmost that can be made of it is, that, sometimes, in some companies, he did sing republican songs, in others he did not—that in some places he was reserved and careful of his conduct, in others not so. There this must rest, except as to the effect of what I consider as a very good character given of him by Mr. Collins.

I have already observed to you upon the evidence of Mrs. Smith, and upon the evidence of Mr. Palmer, whose evidence has been used for the prisoner, to constitute a defence upon that part of the case which respects the probability of this man's having fled for it, when the accusation against Le Maitre,

Higgins, and Smith was made. I do not think I can add any thing, therefore you will judge of it; I mention it now only as being a part of the defence, you will consider what effect it ought to have.

They then proceeded to establish the character of this prisoner, which is certainly a proper head of evidence, sometimes extremely useful, sometimes of weight enough almost to weigh down any thing that can be said against a man. With regard to this person's character, they do not carry it a great way; they represent him as a light man, a man of levity of manners, very careless, apt to drink, and distressed in his circumstances, but good natured, humane, and as they think not likely to do an ill thing. And I think it right to add here Collins's account, which I think goes as much in favour of his character as any part of the evidence; because a man who will in such a situation as he and every English prisoner were in, when requested, come on board a sick ship, and devote his time and attention to the care of a crew who were not able to pay him, and will take upon him a severe duty, and be thereby the means of saving a great many lives, has in that respect a great deal of merit, and indeed, such a character as they describe him to be of, in other respects, is a character which leads one to be surprised that a man of that description should enter into such a conspiracy as this is, for undoubtedly it is the conspiracy of dark and malignant minds, and very unlike that of a man of the character which they prove him to bear. I can only say with respect to this, that in some cases good habits, manners, and principles are tainted and corrupted by circumstances; and I am afraid that nothing has done more towards corrupting them than the effusion of modern political principles, which have unsettled men's minds, and have prepared them to conceive that new duties belong to them, and to entertain but loose notions of the means by which the speculative good that they propose to effect may be brought about: whether any such circumstances have entered into this business or no I do not know; this man was in a situation, certainly, to be deeply tinctured with republican notions: and they could not be carried into the excess into which they are carried in that song—that execrable composition, which was laid before you—without a dereliction of all principle, without a man's having by degrees prepared himself to become, from a humane, tender, good-hearted man, capable of doing friendly offices and bearing his part in the society in which he lives—to become a downright monster—not a citizen, not a man, but, I repeat, a downright monster.

Gentlemen, I shall have discharged my duty when I have told you, that the evidence which is before you is evidence proper for your consideration, as proof of these overt acts. I should think you would be disposed, principally to confine your atten-

tion to the overt act, as to the instrument last described in the indictment; my reason for thinking so is this, because, if I recollect right, there is but one witness that speaks of this instrument to be put in operation for the purpose of throwing a poisoned dart, and that witness is Winter. Now, independent of all objection which might arise from there being but one witness to this fact, there certainly are some exceptions to Winter's testimony; and if it stands alone, with regard to the circumstance of the poisoned dart, it would be a difficult thing, perhaps, for you to satisfy yourselves to rely upon his evidence as to that part of the case; but the instrument more generally described remains the substance of another overt act, proved by other witnesses as well as by Winter, upon which, therefore, it seems to me that it would be the safer course for you to proceed. The observation was fair with regard to Winter, that though he might be a very flighty man, yet that he must have received some impression from what passed between him and Crossfield, importing some charge against Crossfield, of a very criminal nature, from the circumstance that he immediately, on his coming on shore went and gave information before a justice, and that circumstance is corroborative, at least, of the evidence of the other witnesses; though it may not be sufficient to entitle him on account of the natural infirmity belonging to him, to full and entire credit, for the whole evidence he has given, and, I think it would not be right to press his evidence much farther. I conclude, therefore, what I have to offer to your consideration by stating to you, that in consideration of law, the train of evidence, which has been laid before you, is sufficient to be submitted to your judgment as proof, by two sufficient witnesses, of these two overt acts the conspiring to prepare an instrument, not particularly described for the purpose of destroying the king; and the having employed Hill to make a model for a part of such instrument.

With regard to the weight of the evidence as sufficient, or not sufficient to satisfy your judgment as to the truth of it, and as to the entire effect of it, that is exclusively your province, and I have never an inclination to interfere with the province of a jury, upon any subject, and least of all upon a subject of this nature, in which the interests of the public are so deeply involved, and in which the life of an individual is concerned; it is a sacred trust reposed in you. And now, gentlemen, after having heard all that can be said upon this subject it is your province to make true deliverance between our sovereign lord the king, and this prisoner at the bar.

The Jury withdrew at six o'clock to consider of their verdict, they returned into court twenty minutes before eight, with a verdict of *NOT GUILTY*.

The prisoner was immediately discharged.

Thursday, May 19th 1796.

Paul Thomas Le Maitre, John Smith, and George Higgins were set to the bar.

The first twelve gentlemen in the panel who appeared, were sworn as the Jury; the Clerk of Arraignment then charged the jury with the prisoners in the usual form.

*Mr. Attorney General.—Gentlemen of the Jury;—*In the discharge of my official duty, I felt myself bound, under the then circumstances of the case, to lay before a grand jury of the country, an indictment against the prisoners at the bar for high treason. The law has ordained that no man shall be indicted or tried for that offence, unless there are two witnesses to an overt act, or one witness to one overt act, and one witness to another overt act of the same species of treason.

I had occasion to lay before a jury a case against a person, who was indicted together with those now at the bar. Upon that trial I stated what I believed to be a fact, which had been very nicely examined into, that a person of the name of Upton was dead. In consequence of a conviction that he was so, I stated to that jury, that it was not in my power to produce him.

In the course of that trial some suggestion was made, that that person was living, in con-

sequence of which I have thought it my duty to inquire farther into the subject. It is impossible for me to say, that contrivance may not elude the most diligent, and the best conducted enquiry; but I am satisfied, as well as I can be of any such fact, that that man is not in existence: being so satisfied, the law informs me, that the prisoners ought not to be put on their trial, and that they ought not to be put in jeopardy, unless there be that quantity of evidence, which is required by law in this sort of case—It is therefore, my duty not to give you the trouble of hearing insufficient evidence, and the prisoners at the bar are therefore entitled to that acquittal, which, in consideration of law will make them innocent.

At the same time I am bound to say, that if it shall hereafter appear that those, who have come forward in the most solemn manner to induce the belief of that man's death, have practised an imposition, and have deprived the country of the benefit of that man's testimony; and the person, who has been tried, and those who now stand upon their deliverance, of an opportunity of meeting it, I shall hold myself bound, if I continue in the office which I at present unworthily fill, to bring those persons to condign punishment.

The Jury found the prisoners NOT GUILTY—and they were immediately discharged.

PROCEEDINGS

ON THE

TRIALS OF THE DEFENDERS.

612. Trial of JAMES WELDON for High Treason, before the Court holden under a Commission of Oyer and Terminer and General Gaol Delivery in and for the County of the City of Dublin, in the Kingdom of Ireland, on Monday December 21st, and Tuesday December 22nd: 36 GEORGE III, A. D. 1795.*

[COMMISSION.—Monday, December 14th, 1795.]

Mr. Baron George sat as the judge of the commission, and was assisted by Mr. Justice Chamberlain and Mr. Justice Finucane,

IN the latter end of the month of August 1795, several persons were taken into custody in the city of Dublin upon charges of high treason, and in the ensuing commission of Oyer and Terminer held in October, bills of indictment were preferred against them and others not then in custody, which were returned by the Grand Jury to be true bills.

The prisoners in custody were then brought to the bar of the court for the purpose of having counsel and agents assigned.—They were severally called upon to name their own counsel and agents, and such as they named were assigned by the Court, as follows:

Counsel for Thomas Kennedy, George Lewis, Patrick Hart, Edward Hanlon, Thomas Cooke, John Lowry.—Messrs. Curran [afterwards Master of the Rolls], and McNally.

Agent.—Mr. A. Fitzgerald.

Counsel for Thomas Murphy, Michael Maguire.—Messrs. McNally and Lysaght.

Agent.—Mr. M. Kearney.

Counsel for Henry Flood.—Messrs. Fletcher [afterwards a judge of the court of Common Pleas.] and Ridgeway.

Agent.—Mr. F. Flood.

In the interval between the October commission and the present, a person of the name of James Weldon was apprehended upon a charge of high treason, and he, together with such as had been previously

in custody, were served with copies of the indictments and the captions thereof, five days before the first day of this commission.

This day the prisoners who had been in custody at the last commission were severally arraigned and pleaded, Not Guilty.*

When Flood was put to the bar,

Mr. Ridgeway moved that the caption of the indictment might be read. The Court ordered it to be read, but the clerk of the crown said he had it not in court: whereupon it was sent for, and being brought in, it appeared to be on paper.—The counsel then objected to its being read and moved that the indictment be quashed for want of a caption. He said the caption ought to make part of the record, and be annexed to the indictment. Here it is neither—the caption is upon paper, whereas the records of this court are always upon parchment, as the indictment is, and the caption here is detached from the indictment. In several cases in the State Trials, in the rebels case in *Fost.* † 28, and in *Hardy's case*, ‡ the caption and indictment form one continued narrative, and it would be absurd, if it were otherwise. In *Fost.* § 4, the caption states “the bill hereunto annexed is a true bill, &c.”

Mr. Attorney General.—My lords, the prisoner has been served with a copy of the

* The prisoners had upon the first day of the October commission, presented petitions stating that they were ready for their trial, and praying they might be tried in that commission. *Orig. Ed.*

† *Ant.* Vol. 18, p. 330.

‡ *Ant.* Vol. 24, p. 224.

§ *Ant.* Vol. 18, p. 333.

|| Arthur Wolfe, afterwards Viscount Kilwarden, and Lord Chief Justice of the court of King's Bench.

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* Taken by William Ridgeway, esq. barrister at law.

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caption and of the indictment, which is all that is required. He has no right to look into the record. He might as well object, that the indictment consisted of several skins of parchment, when it is too long to be contained in one.

The *Clerk of the Crown* said, that the caption did make part of the record.

Mr. *Ridgeway*.—If the officer assert as a fact, what every man who has sight must be convinced is not so, I know not how to answer.

The *Court* said, that upon this point, they must be satisfied with the averment of their officer, and desired him to proceed and read the caption.

This was accordingly done, after which the indictment was read, and the prisoner was asked, was he guilty, or not?

Mr. *Ridgeway* said he intended to plead that there was no caption to the indictment, but that his client wished for his trial and instructed him to waive objections in point of form, which he had thought it his duty to state.

The prisoner then pleaded Not Guilty.

James Weldon was then put to the bar, and desired to name his counsel; he named Mr. Curran and Mr. M^cNally, who were accordingly assigned to him:—Immediately after this, the Clerk of the Crown was proceeding to arraign the prisoner.—

Mr. M^cNally. —My lords, I object to the prisoner's being arraigned at this time; I have only been assigned this morning: it is impossible I could be prepared to advise him in his plea. It may be said, he was served with a copy of the indictment; but I apprehend, counsel are not at liberty to consult with a prisoner in custody for treason, until they are assigned; therefore, I submit, he ought to be allowed five days before he is called upon to plead.

Mr. *Attorney General*.—My lords, if the prisoner want time to prepare for his defence, I have no objection to any thing that is reasonable. He might have consulted with counsel after the copy of the indictment was served upon him; for although only two counsel are allowed to plead in court for him, yet he may have as many to advise with as he pleases, and directions were given, that counsel should be admitted to him.

Mr. *Justice Chamberlain*.—In fact this man has not had counsel assigned till this morning, and as the Attorney General does not seem to object, I think it would be better to postpone his arraignment.

Mr. *Justice Finucane*.—The act of parliament is not peremptory as so the assignment of counsel before pleading.

Mr. *Baron George*.—No objection is made to allowing the prisoner time.

Mr. *Attorney General* then said, he intended to have Weldon tried first, and therefore

all the other trials must be postponed. He mentioned Saturday for the arraignment and trial of Weldon, which day was accordingly appointed. But on Friday Mr. Attorney General moved to postpone the trial to Monday, lest an objection should be made, that the prisoner had not five clear days.

Mr. *Baron George*.—There is another reason for postponing the trial; if it began on Saturday, it might last till Sunday, which might be productive of inconvenience. Therefore let the trial stand for Monday.]

Monday, December 21st.

The prisoner being put to the bar, Mr. M^cNally applied to have the caption read.

Mr. *Attorney General* opposed this application; the prisoner is not entitled to have the caption read, he has an attested copy, and can avail himself of that.

Mr. M^cNally cited *Fost.* 2. 238. 230, to show that the caption is necessary to assist the prisoner in pleading.

The *Court* said the caption ought to be read. The prisoner must be furnished with a copy of the whole record; how can he know whether he has such a copy unless the whole record be read?

[The caption was accordingly read, and appeared to be engrossed upon parchment, and annexed to the indictment.]

"Be it remembered that at an adjournment of a commission of oyer and terminer and general gaol delivery held in and for the county of the city of Dublin in that part of the king's courts Dublin where the court of king's bench usually sits on Monday the 26th day of October in the year of our Lord God one thousand seven hundred and ninety five and in the thirty-sixth year of the reign of our sovereign lord George the Third king of Great Britain France and Ireland Defender of the Faith and soforth before William Worthington lord mayor of the said city Michael Smith esq. one of the barons of his majesty's court of exchequer in the said kingdom of Ireland Mathias Finucane esq. one of the justices of his majesty's court of Common Pleas in the said kingdom of Ireland and Denis George esq. one other of the barons of the said court of exchequer in the kingdom of Ireland, and others, their fellow justices and commissioners of our said lord the king in and for the whole county of the said city of Dublin assigned by the letters patent of our said lord the king under the great seal of his said kingdom of Ireland bearing date at Dublin the 26th day of June in the first year of the reign of our said lord the king directed to Patrik Hamilton esq. the then lord mayor of the said city of Dublin and the lord mayor of the said city for the time being John lord baron Bowes of Clonlony then being chancellor of the kingdom of Ireland, and the chancellor of the said lord

"the king of the said kingdom for the time
 "being Chaworth earl of Meath Richard earl
 "of Ross Humphrey earl of Lanesborough
 "Richard lord viscount Fitz William sir Wil-
 "liam York then being chancellor of the
 "court of exchequer of the said lord the king
 "of his said kingdom of Ireland and the
 "chancellor of the said lord the king of his
 "court of Exchequer for the time being War-
 "den Flood then being chief justice of the
 "court of chief place of our said lord the king
 "in his said kingdom and the chief justice
 "of his said court of chief place for the time
 "being Richard Rigby then master of the
 "rolls in the said kingdom and the master of
 "the rolls in the said kingdom for the time
 "being Richard Aston then being chief justice
 "of the court of Common-pleas of our said lord
 "the king in the said kingdom and the chief
 "justice of the court of Common-pleas for the
 "time being Edward Willis then being chief
 "baron of the court of Exchequer of the said
 "lord the king and the chief baron of the
 "said court of Exchequer for the time being
 "Richard Mountney then being second baron
 "of the said court of Exchequer Arthur Daw-
 "son then being third baron of the said
 "court of exchequer Robert French then be-
 "ing second justice of the said court of Com-
 "mon-pleas Robert Marshall then being third
 "justice of the said court of Common-pleas
 "Christopher Robinson then being second
 "justice of the said court of Chief Place Wil-
 "liam Scott then being third justice of the
 "said court of Chief Place and the justices of
 "the said courts of Chief Place, and Common-
 "pleas, and the barons of the said court of
 "Exchequer respectively for the time being
 "and others in the said letters named to in-
 "quire by the oaths of good and lawful men
 "of the said county of the city of Dublin
 "and by other ways means and methods
 "whereof the truth may the better be known
 "as well within liberties as without of all
 "treasons misprision of treason insurrec-
 "tions rebellions counterfoits clippings wash-
 "ings unlawful coinings and other falsifying
 "of money of Great Britain or other money
 "current in the said kingdom of Ireland by
 "proclamations burnings and of all murders
 "felonies manslaughter killings robberies
 "burglaries perjuries forgeries rapes unlaw-
 "ful assemblies extortions oppressions riots
 "rouls crimes contemptu deceits injuries es-
 "capes and other offences and causes what-
 "soever as well against the peace and com-
 "mon law of the said kingdom of Ireland as
 "against the form and effect of any statute
 "act ordinance or provision theretofore made
 "ordained or confirmed by any person or per-
 "sons within the said county of the city of
 "Dublin in any wise done committed or per-
 "petrated or thereafter to be done committed
 "or perpetrated and of all accessories to the
 "said offences and every of them within the
 "said county of the city of Dublin as well
 "within liberties as without by whomsoever

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"and howsoever had done perpetrated or
 "committed by any person or persons upon
 "any person or persons at any time howso-
 "ever and in any manner whatsoever, and
 "that the said treasons and other the premises
 "to hear examine discuss try finish execute
 "and determine according to the laws and
 "customs of the said kingdom of Ireland and
 "to deliver the gaol of Newgate in the county
 "of the said city of Dublin of all the prisoners
 "and malefactors therein as often as occa-
 "sion should require. It is presented upon
 "the oath of twelve good and lawful men of
 "the body of the said county of the city of
 "Dublin whose names here follow that is
 "to say Robert Powell Daniel Dickenson
 "James Mills Andrew Callage Hall Lamb
 "James Blacker Richard Wilson William
 "Henry Archer Joshua Manders Robert
 "Hanna Francis Hamilton Mark Bloxham
 "Lewes Hodgson John Gorman William
 "Evans Robert Newell William Lindsey
 "William Berry John Duncan William
 "Crombie William Duncan Richard Cran-
 "field Bladen Sweny in manner and form
 "here following that is to say

County of the City? "The jurors of our
of Dublin, to wit. "lord the king upon
 "their oath present that an open and public
 "war on the 30th day of August in the
 "thirty-fifth year of the reign of our sovereign
 "lord George the third by the grace of God
 "of Great Britain France and Ireland king
 "defender of the faith and soforth and long
 "before was and ever since hitherto by land
 "and by sea and yet is carried on and prose-
 "cuted by the persons exercising the powers
 "of government in France, against our most
 "serene illustrious and excellent prince our
 "said lord the now king and that James
 "Weldon, of the city of Dublin yeoman in
 "the said county of the city of Dublin a
 "subject of our said lord the king of his
 "kingdom of Ireland well knowing the pre-
 "mises but not having the fear of God in his
 "heart nor weighing the duty of his allegiance
 "and being moved and seduced by the insti-
 "gation of the devil, as a false traitor of our
 "said lord the king his supreme true lawful
 "and undoubted lord the cordial love and true
 "obedience which every true and dutiful sub-
 "ject of our said sovereign lord the king towards
 "him our said lord the king should bear wholly
 "withdrawing and contriving with all his
 "strength intending the peace and common
 "tranquillity of this kingdom of Ireland to dis-
 "turb and the government of our said lord the
 "king of this his kingdom of Ireland to
 "subvert and our said lord the king from the
 "regal state title honour power imperial
 "crown and government of this his kingdom
 "of Ireland to depose and deprive and our
 "said lord the king to death and final des-
 "truction to bring he the said James Weldon
 "on the 20th day of August in the thirty-fifth
 "year of the reign of our said lord the king

“and on divers other days and times as well before as after that day at Suffolk-street in the parish of St. Andrew in the city of Dublin, and in the county of the said city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend the said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this his realm of Ireland to depose and wholly deprive and the said lord the king to kill and put to death and that to fulfil and bring to effect his most evil wicked and treasonable imaginations and compassings aforesaid he the said James Weldon as such false traitor as aforesaid and during the said war between our said lord king and the said persons exercising the powers of government in France to wit on the said 30th day of August in the thirty-fifth year of the reign aforesaid at Suffolk-street aforesaid in the parish aforesaid and in the county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did join unite and associate himself to and with divers false traitors to the jurors unknown and did then and there with such false traitors to the jurors aforesaid unknown enter into and become one of a party and society formed and associated under the denomination of Defendants with design and for the end and purpose of aiding assisting and adhering to the said persons so exercising the powers of government in France and so waging war as aforesaid against our said sovereign lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland and afterwards and during the said year between our said lord the king and the said persons so exercising the powers of government in France and enemies of our said lord the king on the 30th day of August in the said 35th year of the reign of our said lord the king and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid and county of the said city of Dublin aforesaid he the said James Weldon as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did with divers other false traitors whose names are to the jurors of our said lord the king as yet unknown then and there meet and assemble to confer treat and consult for and about the adhering to joining aiding and assisting of the said persons exercising the powers of government in France as aforesaid and being enemies of our said lord the king as aforesaid in case they should invade this his kingdom of Ireland and afterwards to wit on the twentieth day of August in the thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St.

“Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said James Weldon as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously associate and unite himself to and with divers false traitors unknown to the jurors aforesaid and did along with said false traitors to the jurors aforesaid unknown enter into and become one of a party and society united and associated under the denomination of defendants with design and for the end and purpose of deposing subverting and overturning the government of this kingdom as by law established and so associated and united as aforesaid did then and there and on divers other days and times as well before as after that day meet and assemble to confer consult and deliberate on and about the means and measures for effecting his aforesaid traitorous and nefarious designs and purposes. And afterwards to wit on the said 30th day of August, in the said thirty-fifth year of the reign aforesaid and on divers other days and times as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid, and county of the city of Dublin aforesaid the said James Weldon as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously associate and unite with divers other false traitors to the said jurors as yet unknown and did along with such false traitors to the jurors aforesaid unknown enter into and become one of a party and society united and associated under the denomination of Defendants with design and for the end and purpose of subverting and overturning the protestant religion in this kingdom by law established and so associated and united as aforesaid did then and there on divers other days and times as well before as after that day meet and assemble with divers false traitors to the jurors as yet unknown confer consult and deliberate on the means and measures for effecting his aforesaid traitorous and nefarious design and purposes and afterwards to wit on the said 30th day of August in the said thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and in the county of the city of Dublin aforesaid the said James Weldon as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid and then and there with divers false traitors whose names to

"the said jurors are yet unknown wickedly and traitorously in order to enlist and procure one William Lawler who aiding and assisting to the said persons so exercising the powers of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland did then and there traitorously administer an unlawful oath to the said William Lawler to the purport following that is to say—'I am concerned.—So am I.—With who?—With the National Convention, meaning thereby the National Convention of France).—What is your designs?—On freedom.—Where is your designs?—The foundation of it is grounded in a rock.—What is your designs?—Cause to equal all nations, dothrone all —gs (meaning thereby all kings), to plant the true religion in the hearts, be just.—Where did the cock crow when the whole world heard him?—In France.—What is the pass word?—Elphismatis.' And afterwards to wit on the said twentieth day of August in the thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said James Weldon as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously in order to enlist corrupt and procure one William Lawler to be aiding and assisting to the said persons so exercising the power of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland and to bind and engage himself thereto did then and there traitorously administer to and instruct the said William Lawler to rehearse and repeat an oath the said James Weldon having then and there for that purpose sworn him the said William Lawler a certain profession declaration and collection to the purport following that is to say 'I am concerned. So am I.—With who?—With the National Convention (meaning thereby the National Convention of France).—What is your designs?—On freedom.—Where is your designs?—The foundation of it is grounded in a rock.—What is your designs?—Cause to equal all nations, and dothrone all —gs (meaning thereby all kings), to plant the true religion in the hearts—be just.—Where did the cock crow when all the world heard him?—In France.—What is the pass word?—Elphismatis.' And afterwards to wit on the said 35th day of August in the said 35th year of the reign aforesaid and on divers other days as well before as after that

"day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said James Weldon as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously in order to enlist and procure one William Lawler to be aiding and assisting to the persons exercising the powers of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland did then and there traitorously administer an unlawful oath to the said William Lawler to the purport following that is to say—'I William Lawler, of my own goodwill and consent, do swear to be true to his majesty king George the third, whilst I live under the same government.—More, I swear to be true, aiding and assistant to every brother bound to me by this application, and in every form of article from its first foundation, January 1790.—And in every amendment hitherto—And will be obedient to my committees, superior commanders, and officers, in all lawful proceedings and not otherwise, nor will I consent to any society or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother, nor in any violation of the laws, but to protect my life and property, and the lives and properties of my brothers.—And I will subject myself to my committee men in all lawful proceedings and not otherwise during the reign of his majesty king George the third, whilst I live under the same

“government—I likewise swear I will meet
 “when and where my committee will please,
 “and will spend what is pleasing to president and company—I will not quarrel nor
 “strike any person whatsoever, knowing
 “him to be such, but will live lovingly and
 “friendly with every one under that denomi-
 “nation—I will not rise any fight or quar-
 “rel on account of my present intrus, or
 “back that for unto my brotherhood.” And
 “the said jurors of our said lord the king upon
 “their oath farther present that an open and
 “public war on the said 20th day of August
 “in the 35th year of the reign of our said lord
 “George the third and soforth and long be-
 “fore and ever since hitherto by land and by
 “sea hath been and is carried on and prosecuted by the said persons exercising the
 “powers of government in France against our
 “most serene illustrious and excellent prince
 “George the third now king of Ireland and
 “soforth And that the said James Weldon
 “a subject of our said lord the king of his
 “kingdom of Ireland well knowing the pre-
 “misses not having the fear of God in his
 “heart nor weighing the duty of his allegiance
 “but being moved and seduced by the in-
 “stigation of the devil as a false traitor
 “against our most serene and illustrious and
 “excellent prince George the third now king
 “of Ireland and soforth and contriving and
 “with all his strength intending the peace of
 “this his kingdom of Ireland to disturb and
 “the government of this his kingdom of Ire-
 “land to subvert be the said James Weldon
 “on the 20th day of August in the thirty-fifth
 “year of the reign of our said lord the now
 “king and on divers other days and times as
 “well before as after that day with force and
 “arms at Suffolk-street aforesaid in the parish
 “of St. Andrew aforesaid in the city of Dublin
 “aforesaid and county of the said city of Dub-
 “lin aforesaid unlawfully and traitorously was
 “adhering to aiding and comforting the per-
 “sons exercising the powers of government
 “in France and being enemies of our said lord
 “the king as aforesaid and that in the prose-
 “cution performance and execution of the
 “said traitorous adhering of him the said
 “James Weldon to the persons exercising the
 “powers of government in France and being
 “enemies of our said lord the present king to
 “wit on the said 20th day of August in the
 “said thirty-fifth year of the reign aforesaid
 “at Suffolk-street aforesaid in the parish
 “aforesaid and in the county of the city of
 “Dublin aforesaid with force and arms falsely
 “maliciously and traitorously did join unite
 “and associate himself to and with divers
 “false traitors to the jurors as yet unknown
 “and did then and there with such false trai-
 “tors to the jurors aforesaid as yet unknown
 “enter into and become one of a party and
 “society formed and associated under the de-
 “nomination of Defendants with design and for
 “the purpose of aiding assisting and adhering
 “to the said persons so exercising the powers

“of government in France and so waging war
 “as aforesaid with our said sovereign lord the
 “now king in case they should invade or cause
 “to be invaded this his kingdom of Ireland
 “and afterwards and during the said war be-
 “tween our said lord the king and the said
 “persons so exercising the powers of govern-
 “ment in France and enemies of our said lord
 “the king on the 20th day of August in the
 “said thirty-fifth year of the reign of our said
 “lord the king and on divers other days as
 “well before as after that day with force and
 “arms at Suffolk-street aforesaid in the parish
 “of St. Andrew aforesaid and county of the
 “said city of Dublin aforesaid be the said
 “James Weldon as such false traitor as afore-
 “said in farther prosecution of his treason and
 “traitorous purposes aforesaid did with divers
 “other false traitors whose names are to the
 “jurors of our said lord the king as yet un-
 “known then and there meet and assemble to
 “confer treat and consult for and about the
 “adhering to joining aiding and assisting of
 “the said persons exercising the powers of go-
 “vernment in France as aforesaid and being
 “enemies of our said lord the king as afore-
 “said in case they should invade or cause to
 “be invaded this his kingdom of Ireland.”

The same overt acts were stated in support of the second count, and in the same manner as set forth in the first.—The indictment concluded in this way.—“against the duty of the allegiance of the said James Weldon against the peace of our said lord the king, his crown and dignity and against the form of the statute in such case made and provided.”

Clerk of the Crown.—How say you, James Weldon, are you guilty of this treason in manner and form as you stand indicted and arraigned or not?

Mr. McNally.—My lords, I submit to your lordships that this indictment must be quashed, the caption annexed to it being illegal both as to form and substance. The first error that appears upon the face of the caption, is that it lays no venue; it does not show whether the bill was found by the grand jury of the city or of the county of Dublin. I am aware that by a statute this court is taken to be in the city and the county; locally it is in the county of Dublin; artificially it is in either; but the caption does not set forth any county in the margin: if it did, I admit it might be unnecessary to repeat that county in the caption; but all that is stated in the body of the caption is, “the place where King’s-bench usually sits” without averring it to be in the city of Dublin, where the offence is supposed to be committed. 2ndly. The caption states an adjournment of a session, but does not state when the original session began, 8tr. 865. 2 Hawk. 362. 3rdly. It does not state that the grand jury were sworn and charged, 4 Bl. Com. Post. 4* 2 Hal. P. C.

167. s. 6. 9.—The caption states that it is presented upon the oath of twelve men that is to say, and it sets out the names of twenty three; this is repugnant, for the latter part is contradictory to the former. 4thly. The caption does not state the additions of the jurors; the precedent in the appendix to 4. Bl. Com. states the foreman to be a *batonnet* and the rest are esquires. The necessity of the addition is obvious; it is to ascertain the identity of the grand juror, for many objections may lie against him, he might be an outlaw, convicted of treason or felony and consequently disabled from serving upon a grand jury.

Mr. Attorney General rose to answer these objections but was stopped by the Court.

Mr. Justice Chamberlain.—The court do not think the objections founded. It is taken for granted, that the caption is part of the indictment; it is not; it is only the style of the court, and where captions have been quashed it has been upon *certiorari*, or writ of error.

The prisoner then pleaded in abatement—“And the said James Weldon says, that he is not a yeoman, but a soldier in his majesty's 7th regiment of dragoons.”

Mr. Attorney General.—I demur to this plea.

Mr. Justice Chamberlain.—Then you admit that he is not a yeoman?

Mr. Attorney General.—Is the plea so my lord? I had misconceived it.

[Then the plea was read, and after some conference among the counsel for the crown, Mr. Attorney-general replied, and averred “that the prisoner is a “yeoman” and this he prayed might be tried by the country;—The counsel for the prisoner joined the *similiter*—“And the said James Weldon doth so likewise.”]

Court.—You pray the usual process?

Counsel on both sides said, certainly; and the attorney-general prayed that a jury might be returned *instanter*.

It then became a question to what time the plea related?—whether it meant, that he was a soldier at the time when the plea was put in—or at the time when the indictment was found?

Mr. Curran.—The meaning of the plea is, that the prisoner never was a “yeoman” either at the time of his arrest, the time the indictment was taken, or at this day. It is a sort of objection to the identity, that he is not the man presented by the grand inquest as a “yeoman,” for he is a soldier.

A panel was then returned by the sheriff “and twelve persons were sworn to try the issue, whether the prisoner be a “yeoman.”

Mr. Attorney General.—Gentlemen of the jury. The prisoner is indicted for high treason, and he is described in the indictment as a “yeoman;” an issue is now joined upon that description and if it be found for him, the indictment must be quashed.

The law requires, that an indictment must set forth what a party is; the prisoner is described as a yeoman; we shall produce a witness to show what he is, and you will determine whether he be a “yeoman,” or not. The objection is as frivolous as can be conceived; it is a disgrace to justice that such objections are allowed, and I say this to show you that if there be any doubt in the case, you will lean against the plea. What was the meaning of the word “yeoman” 100 years ago, or what was the meaning of the Saxon word *geoman*, is not now the subject of inquiry. We will show that the prisoner is a soldier in a regiment of horse; and the words *yeoman* and *labourer* have been applied indifferently as sufficient descriptions of persons in his situation.

The counsel for the prisoner may show from black letter books, what was the meaning of the word “yeoman” many years ago; but it is sufficient to describe a man to a common intent, and in the known use of words at the time of the indictment found. The word “yeoman” is applied to many different situations, as a person having land and entitled to serve upon a jury. If that be the appropriated meaning, it has not been so taken lately. There are *yeomen* of the king's guards—so are the attendants upon the lord lieutenant's person, and a variety of others in different situations. Therefore the insignificant word cannot be now made a ground of objection; this man being described with sufficient particularity. An objection might be made to a description of a man as one kind of artificer, when in truth he was of another, but the same objection cannot be made to the words *yeoman* or *labourer*.

Tresham Gregg, sworn.—Examined by Mr. Prime Serjeant [James Fitzgerald.]

Are you gaoler of Newgate?—I am.

Do you know the prisoner?—I know the prisoner, James Weldon, since he was committed to gaol.

How long since is that?—About a month.

Had you any conversation with him?—I asked him what business he was of. He said he was a breeches maker from the county of Meath, but that he had been a soldier for two years: that he was a soldier in the black-horse and was taken in Cork.

Tresham Gregg cross-examined by Mr. Curran.

By virtue of your oath, do you know what a yeoman is?—I do not.

Mr. Curran.—Then you may go down and inquire before you come to prove that a prisoner is a yeoman.

Here the evidence closed.

Mr. Curran.—Gentlemen of the jury. The law requires that there should be a determinate degree of certainty in the specification, not only of every crime, with which any man

is charged, but also of the person charged; and it is not for us to say, that any certainty which may be required in favour of life, or any objection permitted by the law, is frivolous, or disgraceful to the jurisprudence of the country. It is a known fact, that the certainty of description which has been adhered to in this country, has been departed from in a neighbouring country, and hundreds of innocent persons have perished for want of it.

This man is indicted as a *yeoman* and if you have any doubt upon the case, the uniform principle of the law is, that in such case you should lean in favour of the prisoner. But gentlemen, there is no doubt in the case: your oath is, to try whether this man be a *yeoman*. Our society is divided into different degrees, and the inferior orders with regard to one another, and the peers who are above them have correlative appellations. The name of *yeoman* is a known and defined name. It is not to black letter that I shall refer the Court or to books that are a little known as the promunciation of the word; but to the commentaries of judge Blackstone, who has not written many years ago. 1 Bl. Com. 406. "A *yeoman* is he that hath free land of forty shillings by the year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one that is *probus & legalis homo*." He adds in the ensuing paragraph, "the rest of the commonalty are *tradesmen, artificers, and labourers*; who (as well as all others) must in pursuance of the statute 1 Hen. 5. c. 5. be styled by the name and addition of their estate, degree, or mystery, and the place to which they belong, or where they have been conversant, in all original writs of actions, personal appeals, and *indictments* upon which process of outlawry may be awarded; in order as it should seem to prevent any clandestine, or mistaken outlawry, by reducing to a *specific certainty* the person who is the object of its process." Thus distinguishing the man of property in land, from those who earn money by trades as a tradesman or artificer, who must be described by their degree or mystery. From this respectable authority and the plain sense of the case, the jury will find for the prisoner. You are not to calculate consequences. If the man is entitled to the benefit of the objection, you are sworn to give it to him, and you are not to depart from that oath upon being told, that the objection is frivolous or disgraceful to justice.

Mr. Justice Chamberlain.—I wish that counsel in speaking to this point, would argue, whether we are to advise the jury upon the common acceptance of the word, or whether we are bound by the strict letter of the law?

Mr. Baron George.—Shakspeare seems to have considered a *soldier* synonymous with *yeoman*, and Dr. Johnson in his second definition of the word, says, "it seems to have been anciently a kind of ceremonious title given to

soldiers; whence we have still *yeomen* of the guard."

"Tall *yeomen* seemed they, and of great might
And were enraged ready still for fight."

SPENSER.

—"you, good *yeomen*,
Whose limbs were made in England, show
us here,

"The mettle of your pasture,"

SHAKSPEARE *Hen. V.*

Mr. Prime Serjeant.—My lords, *yeoman* is at this day the general description of a man who is not a gentleman, or an esquire; for if a man has acquired no addition from his mystery, trade, or craft, he is a *yeoman*. The rules of law must adapt themselves to the growing occasions of the times, and that man will be effectually described as a *yeoman*, who has acquired no other addition, by which he could be discriminated. In common reason, it is to be considered as the general description of a man, who has not acquired any other. A *soldier* most unquestionably cannot be a description under which a man could be indicted. *Burgess* is not a good description, nor is *citizen*, nor *servant*, neither can a *soldier* be, because it is not general enough upon which to arraign a man.

Mr. Solicitor General [John Toler, afterwards lord Norbury and Lord Chief Justice of the Court of Common Pleas].—The single question is, whether under the statute of additions, 1 Hen. 5, this description be sufficient? The authority of Shakspeare and Johnson is decisive to show, that a *soldier* is a *yeoman*. 2 Inst. 668, If a man be named a *yeoman*, he cannot abate the writ. Is this such a name as the prisoner may be known by? He has given no evidence of his being of any art or mystery, and it is impossible for those concerned for the crown to know in all cases the true art or mystery of a person accused. Before the statute of Hen. 5, no description was necessary, and it was enacted to remove objections made in outlawries. But where a party is forthcoming, the argument is done away. *Yeoman* is a generic term, including many degrees, and is fully sufficient to answer the intention of the statute.

Mr. Scourin same side.—This plea is founded upon the statute of additions, by which it was provided that persons indicted, should be described either by their *state* and *degree*, or by their *mystery* or *trade*, if they were of any mystery or trade. Ever since the statute was enacted, it has been in the option of the prosecutor to describe the person accused by his *rank*, or by his *trade*; it is not necessary to describe him by both. From lord Coke's argument upon the statute it appears that *state* or *degree* mean one and the same thing; "The *state* or *degree* wherein a subject standeth." There are many persons who have no trade, and who must be described by some rank. A soldier is no trade, and he stands

in the nature of a *servant* taken into the pay of the crown, and does not come within the description of *mystery* or *trade*, a servant is not of any *mystery* or *trade*. See then the alternative offered to the prosecutor. Where a party has no *trade* or *mystery*, he must be described by his state or degree in the community. What are they? If under the rank of nobility, they are divided into baronets, knights, esquires, gentlemen, and yeomen, and there is no other description under the rank of nobility by which he could be described. Here we have shown that this man was not of a *trade* by which he could be described, and therefore he must be described by his rank and condition, that is a *yeoman*; and if he be not a *yeoman*, of what other rank is he? A *yeoman* is the lowest rank in the community. Between *gentleman* and *yeoman*, there is not a clear line of distinction, by which a gentleman could plead in abatement, if indicted as a *yeoman*. In confirmation of this, I appeal to the uniform usage for many years, during which numbers have been described as *yeomen*, where they were not of higher rank in the community. Therefore I submit, that it is incumbent upon your lordships to inform the jury, that upon the evidence, the rank of this man is not higher than that of a *yeoman*; that there is sufficient evidence to show that he is of that inferior rank, and no evidence to show he is of any higher.

Mr. Justice *Chamberlain*.—Is there any precedent of an indictment describing a man as a soldier?

Mr. Justice *Finlanc*.—It appears from Kelyng that "sailor" is a good addition, and Hawkins in explaining the word *mystery*, says *art, trade, or occupation*.

Mr. Kells and Mr. Ruxton said a few words on the part of the prosecution. There being no precedent of an indictment against a man, as a *soldier*, was a strong argument to show it was no good addition; and as to *sailor*, it may be observed, that it is a sort of *mystery*, for sailors serve a regular apprenticeship.

Mr. Justice *Chamberlain*.—The inclination of some of the court,——indeed I may say it is, at present, the opinion of all the court, that *yeoman* within the common acceptation of the word, is a sufficient description of the person:—We mean to tell the jury so, and after that to adjourn the court, and take the opinion of all the judges this evening; and in case we should be wrong in the opinion now given, we shall take their advice how to proceed.

Gentlemen of the jury;—The issue you are to decide upon is,——Whether the prisoner is a *yeoman* according to the strict legal definition of the word?—Upon the authority of judge Blackstone, who is certainly a very high authority in the law, the prisoner does not appear to be a *yeoman*. But according to the best writers in the English language, he is a *yeoman*. "It seems to have been anciently a kind of ceremonious title given to

soldiers, whence we have still yeomen of the guard." Our present opinion is, that entitling the prisoner by a general title of courtesy is sufficient within the statute of additions. All society is divided into peers, baronets, knights esquires, gentlemen, and *yeomen*, tradesmen, and artificers. At the time of finding this indictment, which is the material time for you to attend to, the prisoner was not an artificer. He had been bred a breeches maker, but two years before he had given up that and became a soldier, so that, at the time of finding the bill, he could not be entitled a tradesman or artificer, nor a gentleman, nor an esquire. Therefore under the common acceptation of the word, I think him sufficiently described, and I am strongly fortified by this circumstance, that no precedent is produced where a man is described as a "soldier" in an indictment. There may be a reason for sailors, because they serve an apprenticeship. Upon the best English authorities *yeoman* is a title of courtesy. If we are wrong in this opinion we shall be set right by the judges, who will be summoned this evening.

The jury retired and after some deliberation brought in a verdict, that the prisoner is a *yeoman*.

The court immediately adjourned.

Tuesday, Dec. 22d. 1795.

Mr. Justice *Chamberlain*.—We are to inform the prisoner and his counsel, that nine of the judges met at lord Clonmell's, and they were unanimously of opinion, that the direction given to the jury was right.

The prisoner then pleaded, Not Guilty.

The sheriffs returned the panel, which was called over in the following order:

Sir Edward Crofton, bart. sworn.

Sir James Bond, bart, challenged peremptorily by the prisoner.

William Bury, esq. sworn.

Hugh Carnocross, esq. challenged peremptorily by the prisoner.

William Cope, esq. sworn.

Meredith Jenkin, esq. challenged peremptorily by the prisoner.

Morgan Crofton, esq. sworn.

Rawdon Hautenville, esq. sworn.

Thomas Howison, esq. set by on the part of the crown.

Samuel Middleton, esq. challenged peremptorily by the prisoner.

Thomas Read, merchant. sworn.

William Sparrow, merchant, sworn.

Joseph Dickinson, esq. challenged peremptorily by the prisoner.

James French, esq. sworn.

William Galway, merchant, challenged peremptorily by the prisoner.

Isaac Maunders, merchant, challenged peremptorily by the prisoner.

R

John Minchin, merchant, challenged peremptorily by the prisoner.
 Simon Verpoyle, merchant, challenged peremptorily by the prisoner,
 Charles Henry Sirr,* esq. challenged peremptorily by the prisoner.
 Ralph Mulhern, merchant, sworn.
 Mead Nessbitt, merchant, set by on the part of the crown.
 Henry Pettigrew, merchant, sworn.
 Thomas Prentice, merchant, set by on the part of the crown.
 Thomas Wilkinson, merchant, set by on the part of the crown.
 William Blair, merchant, sworn.
 Thomas Palmer, merchant, challenged peremptorily by the prisoner.
 Goodwin Pillsworth, merchant, set by on the part of the crown.
 George Carleton, merchant, challenged peremptorily by the prisoner.
 John Smith, merchant, sworn.

THE JURY.

Sir E. Crofton bart.	W. Sparrow, mercht.
William Bury, esq.	Jas. French, mercht.
William, Cope, esq.	R. Mulhern, mercht.
Morgan, Crofton, esq.	H. Pettigrew, mercht.
R. Hautenville, esq.	W. Blair, mercht.
T. Read, mercht.	John Smith, mercht.

The prisoner was then given in charge to the jury by the clerk of the crown, who read the whole indictment.

Mr. Ruxton opened the pleadings.

Mr. Attorney General.—My lords, and gentlemen of the jury;—In this case it will not be necessary for me to do more than state the several circumstances which may be material to explain the evidence that will be produced; and even this statement is rendered necessary rather from the importance of the case, than any difficulty which will occur. Were I to follow my own discretion, the case is so simple as to need no statement, but merely to produce the witnesses upon the table.

Gentlemen, the prisoner stands charged with the highest crime known to the law; the indictment states two species of that crime. 1st compassing and imagining the death of the king:—2ndly. adhering to the enemies of the king. Gentlemen, the charge of compassing the death of the king, it may be necessary to explain in a few words; very few I shall use, because it will be the duty of the court to explain to you, the law upon that subject; therefore I shall only say so much as will enable your minds to apply the evidence to the charge stated in the indictment. The law has made it a capital offence to compass or imagine the death of the king. Our mild laws, gentlemen, make the *imagination* of no other offence penal; the crime must be committed in every other case. But the person of the king is sacred. So much depends

upon his life, that for the sake of the public, their tranquillity, the preservation of their lives and properties, the law has guarded the life of the king in a peculiar manner. Any act, which in its nature tends to bring the life of the sovereign into danger, will support the charge of compassing his death. It is not necessary, that the party accused shall have entertained the design of putting the king to actual death—of depriving him of life;—It is sufficient in the eye of the law, if the man has determined to act in such a manner as to bring that to pass. As to levy war; to change the government, which cannot be undertaken without hazarding the king's life; to bring war upon the kingdom must expose his life, and even though the party had, in his own mind, predetermined not to put the king to death, yet if he does those acts which endanger his life, he is guilty. But, gentlemen, the law which is thus careful of the sovereign's life, guards with equal care the lives of the subjects, who may be accused of intending to commit such a crime. Though the law makes the imagining the king's death a crime, yet it takes care that it shall be proved by such circumstances as evince the fact of the intention. There must be what is called an *overt act* stated upon the indictment; and that overt act must be proved from which it can be collected, that the design was taken to compass and imagine the king's death.

The other species of treason with which the prisoner is charged is, adhering to the enemies of the king—to persons in a state of war with these realms. Gentlemen, it is needless to say any thing in explaining the nature of this crime:—it speaks for itself. These, gentlemen, are the two charges, that he did compass the king's death, and that he adhered to the king's enemies. Adhering to the king's enemies is evidence also of the compassing of the death of the king; because it is impossible to adhere to the enemies of the king without exposing that sacred life to danger.

Gentlemen, I shall state the overt acts which are to support these charges. There are eight of them. If any one of them be proved, and the inference which the indictment charges, be drawn from it, though there be no evidence of the other seven, the prisoner must be found guilty. The first overt act states, that he associated with divers traitors unknown, and became one of a party under the denomination of "*Defenders*" for the purpose of assisting and adhering to the persons exercising the powers of government in France. The second is, that he assembled with others to consult about adhering to the French. Thirdly, that he associated with persons called "*Defenders*" for the purpose of overturning the government of this kingdom as by law established. The fourth overt act is, that he united with "*Defenders*" for the purpose of overturning the Protestant religion. Fifthly, That he enlisted one William Lawler to aid the persons exercising the

* The celebrated Town Major of Dublin.

powers of government in France, and administered to him an oath, upon which I shall presently make some observations. The sixth overt act states, that he enlisted Lawler to adhere to the French, should they invade this kingdom, and that he administered a catechism for that purpose. The seventh is, that he enlisted, corrupted, and procured Lawler to become one of a party formed for the purpose of subverting the government. Eighth, that he enlisted him for the purpose of overturning the Protestant religion. Such, gentlemen, are the facts to be proved against the prisoner at the bar. I have stated the outlines of them. Some or one of them must be proved to sustain the charge. The same overt acts are laid as applicable to each of the species of treason charged against the prisoner.

Having stated, thus briefly, the charge and the nature of it, it becomes my duty to state the evidence which will be produced to sustain that charge. Before, however, I enter into the particulars of that evidence, it may not be improper to call to your recollection the state of things in this country at the time this offence is alleged to have been committed. In doing this, gentlemen, I shall state what is a notorious historical fact—what cannot be excluded from your minds—every man in the community must be impressed with it.—For some years there have existed in this country, a number of persons, associated for wicked, and atrocious purposes, styling themselves “*Defenders*.” They have from time to time for the last four or five years infested almost every part of this, in that respect, unhappy country. It has appeared in various trials in the different provinces, what the nature of the association of those wretches is:—it has appeared with what designs they associated, and though those who excited them have not appeared to public view, yet the manner of exciting them, and the object are but too plain.

Since the year 1790, there have appeared in many counties, particularly in the Northern, Eastern and Western counties, many persons under the denomination of “*Defenders*,” committing various outrages, and who have directed their attempts most particularly to disarm their fellow subjects. It has appeared in every investigation of this offence, that there have been in various counties, a number of persons calling themselves “*Committee Men*,” who have guided the wretches they had deluded, directed their actions, and prescribed their movements;—pointed out the different courses they were to take, and administered oaths, “to be true and faithful to the *Committee Men*,”—“to obey the laws of the committee in all things.”—and these oaths they have guarded with such equivocations, that while they bound the parties to the commission of the most atrocious crimes, the oath should appear to be merely an oath of allegiance to the king, and submission to the

laws of the country. These committees have existed in many counties of the kingdom, associating the lower orders of the people, by holding out promises to seduce uneducated men;—telling the poor that they would enjoy the property of the rich, that they were no longer to exist by their industry, and representing what they knew must be impossible, that all men were equal. If it were possible that such equality could be effected, the consequence would be the subversion of all government, and that all would be reduced to a savage state.

Such, gentlemen, were the topics held out. In other places they propagated different things, and they dared to use the sacred name of religion,—having no religion themselves,—to forward the purposes of their wicked imposition. It has appeared in too many instances, and I am shocked while I state it, that these miscreants endeavoured to instil hatred and animosity into the minds of their converts against their fellow christians, though differing in some speculative points, professing the same religion, worshipping the same God, and seeking redemption through the same Jesus Christ. They represented, that their Protestant brethren were to be destroyed; and this they attempted at a time when the legislature has been session after session, endeavouring to put them upon a footing with themselves, to do away differences, and to put an end to distrust.—While I say this, gentlemen, let no man imagine, that we mean to impute any thing of this kind to the general body professing the Roman Catholic religion: No, gentlemen, we attribute these abominable practices to others, who are seeking their own impious views.—It is a subject so abhorrent to my nature, that I would not have mentioned it, but that it must come out in evidence; for I would not suffer a word to escape my lips, that would tend to divide those, who are bound to that law and that government which we all enjoy.

The conduct of the Committee Men is historically known; it is proved in Connaught, it is proved in several counties of the North, and in Leinster; and it is wonderful, that I have seen circumstances proved in the most distant parts of the West, corresponding with circumstances arising in the distant parts of the North and East—manifesting most clearly, that there was a united scheme to subvert the religion and the government of the country, by exciting sedition among the lower orders of the people. How these schemes were set on foot so universally, whether by French gold, or democratic clubs, is neither for you, gentlemen, nor me now to inquire—whether by the United Society of Dublin, or Belfast, I will not trouble you at present with taking notice, or inquiring. I only wish to impress upon your minds, that it is a fact historically known, that there does exist in the country such a scheme of rebellion and insurrection.—Farther to forward this plan,

they have levied money from the poor wretches they seduced; a man sworn pays a shilling to the person administering the oath; the Committee-man receives the shilling, and if he swear many, the consequence is, a considerable income. In fact, the practice became common, and they spoke of a Committee Man in a village as they would of a shoe-maker. "Where are you going?"—"To the Defender-maker."—And to that Defender-maker the person paid a shilling, as if he had obtained something valuable.

So far, gentlemen, it is necessary I should state these facts to you. I hope in doing so, I do not overstep my duty. I do not mean to rouse your passions upon this subject, and if I did, I could not. The statement I have made cannot affect the prisoner, unless it be proved that he is such a man as is charged by the indictment, and it was necessary to state what I have, that you might understand the dangers and proceedings of the "*Defenders*," which will be proved in evidence.

Gentlemen, the crime with which the prisoner is charged, is of the most awful nature in its consequences both to him, and to the public. The charge is this, that the man at the bar is guilty of a crime, the end and object of which was the destruction of the government under which we live—the destruction of the life and liberty of every man living under it—the destruction of our laws, which have been the envy of every one for seven hundred years. But this crime is greatly aggravated, if it be capable of aggravation, by the peculiar situation in which the prisoner stood. The prisoner at the bar was, at the time when the offence was committed, a dragoon serving his majesty in the 7th regiment of Guards, then in this city—placed in a situation to defend his country—sworn in the presence of God, for whom he seems to entertain a profound reverence, to defend his king and country. Such is the man, upon whose life your verdict is now to pass.

Gentlemen, having stated the situation in which he was placed, and the duty he particularly owed to his king and country—having stated that he had solemnly sanctioned that duty in the presence of his God, it is the less probable that he should commit the crime. If however he shall have committed the crime, then he will be less an object of mercy. Gentlemen, it will be proved, that this man administered an oath to a person of the name of William Lawler, which oath went to bind that person to be a "*Defender*;"—and now having mentioned the name of the person, who is the witness for the prosecution upon this trial, I shall state to you the nature of the evidence he is to give, and the manner in which the crown became acquainted with the designs of the conspirators.

William Lawler, the witness, is a native of this city; he is by trade a guilder; served a regular apprenticeship to that trade—after which he practised at it for some time in this

city, and then went to London, whither his father had removed. There he had the misfortune, and it is common to others as well as him, to read the words of that celebrated apostle, Mr. Paine—to have his imagination somewhat heated by his writings, and he became a member of the London Corresponding Society associated to improve our constitution. There his principles were not much improved; he returned to Dublin, and became a member of a reading society;—it was called the Telegraph Society; and also of another society of an admirable name, if it imported nothing more; that was the Philanthropic Society, where there were readings and instructions, which, if followed, would have left the jury no constitution, no law, upon which to hear the attorney-general state a case in the court of King's-bench. In that society they received instructions from Mr. Burke, now a fugitive in America. The "*Defenders*" having broken out with unusual violence last summer, approached the capital, and began to disturb the outlets of the city. Lawler, a member of the society, and a republican, desirous enough (I will not attempt to conceal it) of disturbance, was asked by some of the associates, or a discourse arose among them, Kennedy, Brady, Hart, and others, touching the "*Defenders*."—However the subject was first introduced, it was proposed, that Lawler should become a "*Defender*," and for that purpose, some of these excellent clubbists (he will inform you who they were) proposed bringing him to the prisoner, then quartered in Dublin. Accordingly Lawler was brought by two persons of the names of Kennedy and Brady, to the prisoner, opposite the barrack-gate, where the prisoner Weldon was;—they sat for some time together. Weldon was then quartered in the barrack, but had a lodging within a door or two of an ale-house. Kennedy and Brady bring Lawler to this lodging; after they had sat some time drinking punch, one Clayton came in, and they proposed to swear Clayton and Lawler. Accordingly they were sworn by the prisoner at the bar, and upon being sworn, they paid their shilling a piece. A discourse arose, after the swearing, touching the object and nature of the "*Defenders*" pursuits, and in the course of that conversation, the prisoner did avow, that there would shortly be a rising in the North, which would be joined by a person whose name Weldon did not disclose—a rising to effect by force the purposes of these associated "*Defenders*"—and the other persons Kennedy and Brady did unite in declarations of that sort. It will appear to you, gentlemen, that being thus united "*Defenders*," Lawler was brought to three different meetings, where "*Defenders*" were assembled, particularly at a public-house in Plunket-street—there were eighteen or nineteen together, and there a discourse arose, and a proposition was made, for buying powder and procuring arms, for the purpose of

rising to seize the castle of Dublin, of seducing the army from their duty, and by terrifying the good industrious citizens of this town into a belief that the army had betrayed them, they might be put into the possession and under the government of miscreants such as these.

Such, gentlemen, are the facts, or pretty nearly (for I do not pretend to say they are precisely) such as will appear in evidence. I will now state the oath administered to Lawler by the prisoner (to whom he had been brought by Kennedy and Brady); the oath was this, "I William Lawler of my own good will and consent, do swear to be true to his majesty king George 3rd."—The oath which the prisoner himself had taken, but with a little addition to it, well worthy your attention, because it appears to me that what was designed to cover the guilt, is, if I understand it, the strongest manifestation of it. "I will be true, *while I live under the same government*."—The first part is an oath of allegiance, but not that of *remaining* under his government; implicative, demonstrably, of a design to *change* the government:—it is not limited to the life of the king, but while the government remains; and when the oath was administered, the prisoner explained it, knowing that the object was, to appear to be taking an oath of allegiance, while he was intending to destroy the king.—This, said he, is put in to deceive the army, that they may not discover the consequences. "I swear to be true, aiding and assisting to every free brother"—that is a name for a "*Defender*" known among themselves—"And in every form of article from the first foundation 1790, and every amendment hitherto, and will be obedient to my committees, superior commanders, and officers, in all lawful proceedings and not otherwise"—Here there is the same sort of concealment, that is introduced in the part concerning the king, and, gentlemen, you must perceive, that "*lawful proceedings*" mean proceedings according to *their* laws—"nor will I consent to any society, or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother"—[Here Mr. Attorney-general stated the remainder of the oath as set out in the indictment]. This, gentlemen, was the oath administered, as the witness will swear, by the prisoner, to Lawler and Clayton—an oath that needs little comment; it is impossible to read it, without putting the construction upon it, that it requires obedience to other laws than those of the country. But if there were any doubt upon this, it will be removed by perusing the catechism, which was administered and attested at the same time. It is pretty much the same as has appeared in several counties of the kingdom. It is plain, that there was but one National Convention in the world at the time, that of France, and if you are satis-

fied of these overt acts, both species of treason will be proved, compassing the king's death and adhering to his enemies. [Here Mr. Attorney stated the catechism, as in the indictment].—Whether —gs mean kings, you will determine. A stroke is made first in the paper and immediately after and close to it, are the letters *gs*, being the final letters of the word *kings*. You are to determine how they meant to fill it up, whether with that word or not. Upon putting all the parts together, you will determine, what the object and tendency of the force intended to be raised was; whether it be not manifest, that there was an object by force to change the government, and by that to aid the powers of France, which is adhering to the king's enemies. "To equal all nations" was to put down the established government, and to place themselves as governors, and to exercise that tyranny, which is exercised in a neighbouring country, and using as a pretence the sacred name of freedom.

Gentlemen, I have told you, that after this oath was administered, the witness attended two or three meetings of the "*Defenders*," hitherto, possibly, conceiving that the "*Defenders*" might be used for the purpose of obtaining what was their grand object, a reform of the realm—a reform of the state, by making it a republic, and putting men, such as himself in the government. But after attending one or two meetings, he found the persons assembled had objects very different from what he had conceived. He was cautioned to take care how he should say, he was a Protestant, and some of those miscreants, departing from that religion of which they pretended to be members, formed designs of massacring their Protestant brethren. Gentlemen, let me repeat it again, for I cannot repeat it too often, that we do not suppose, that any educated, or well-minded Catholic could entertain such a design—but young men, whose minds are easily heated, for such there are, unlettered men, profligate men, without religion, or morals, of the lower order of the people—these are the persons who are persuaded to entertain designs of this sort, and to the extent of their power would make the attempt. Lawler discovered this—a Protestant—seeing the tendency of their meeting, and knowing that the "*Defenders*" were associated throughout the kingdom, he became alarmed for the consequences, as to himself. He immediately disclosed the designs to a gentleman by whom he had been employed—a man of great worth and credit. Lawler told him confidentially what had come to his knowledge. That gentleman, Mr. Cowan, did, as was his duty, inform government of the situation in which the state was, for several hundreds were united in the scheme. Government thus alarmed, did immediately seize upon those against whom they had charges, and they were committed to prison:—they now remain for

their trials, and the prisoner Weldon is first brought up.

One piece of evidence, gentlemen, I have omitted to state, which if it should appear in the light I state it, is of the utmost importance to this case. Weldon was a private in the 7th dragoons, which was ordered to Cork, there to embark for foreign service. Thus taken from his gainful situation of a committeeman, or defender-maker, it was necessary to appoint some person to succeed him. He gave the oath and the article to Kennedy, that he might become a Committeeman. Kennedy was seized, and in the fob of his breeches were found the oath and the catechism, which Weldon administered to Lawler. So that here is a fact, which could not be made for the occasion—a fact disclosed before Kennedy was seized—that the oath was delivered over to Kennedy, which is fully and clearly corroborative of the testimony of Lawler. We will now call him, and we doubt not you will examine this case, so important to society, with all due deliberation, and find such verdict, as will do you honour, and the public, justice.

William Lawler sworn.—Examined by Mr. *Solicitor General*.

What has been your occupation—were you bred to any trade?—I was bred in the gilding line.

Did you work at that trade in England or Ireland?—In both places.

First in Ireland, then in England?—Yes Sir.

You served an apprenticeship ship here?—Yes.

To whom?—The first part to Mr. Robinson of College-green; the second part to Mr. Williamson of Grafton-street.

Did you work at your trade in England?—Yes.

When did you return?—About two years ago.

When did you go to England?—About the year 1791.

During the time you were in England, did you belong to any political society?—The London Corresponding society.

Upon your return to Ireland did you bring any letters of introduction?—One.

To whom?—To Archibald Hamilton Rowan.*

From whom?—From Daniel Isaac Eaton†, of Bishopgate street, London, printer.

I suppose you delivered that letter?—I delivered it to a servant of Hamilton Rowan. I called in about a week and saw him.

Where was he then?—He came out of a back parlour, and we both went into the front parlour.

Did you ever see him afterwards?—Yes I

saw him in the street, and then in Newgate.

After your arrival in Ireland, did you become a member of any society?—I did, Sir.

Of what society?—I do not rightly recollect the name of the first, but after it was dissolved—

Where did it meet?—At my rooms at one Galland's in Crane lane and in Hoey's-court. When that was dissolved, I became a member of another.

What was the name of the second society?—The Philanthropic society?

You do not recollect that the first had any particular name?—It had a name, but I do not recollect it.

Do you recollect the name of any particular gentleman of that Philanthropic society?—There was a Telegraphic society.

But do you remember the names of any persons belonging to the Philanthropic society?—There was Burke and Galland in it.

What Burke?—Of the college.

What is become of him?—I do not know, but am informed he is gone to America.

You afterwards became a member of the Telegraph society?—They were both much about the same time.

Was there any particular object of this society.

Witness.—Of the Telegraph?

Mr. *Curran*.—I trust the gentlemen concerned for the crown will endeavour to keep the witness, whose evidence they are apprized of, to the strict rule of not drawing from him any answer, of the legality of which there may be a doubt. It is too general to ask what the object of a society was. I do not state this formally to argue upon it; but suggest it to their candour.

Mr. *Solicitor General*.—If I knew of any other mode less leading than that which I have used, I would adopt it; but upon some points it is impossible to put a question without in some measure suggesting an answer to it.

Mr. *Curran*.—If I am pushed to the necessity of arguing the ground of the objection, it will require very little to be said in support of it. This man says he was a member of a particular society, and he is asked what was the object of that society, although the prisoner was not a member of it.

Mr. *Justice Chamberlain*.—You have not laid a foundation for asking this question, unless you establish a privity between this society and the prisoner.

Mr. *Solicitor General*.—If I were driven to argue this question, I could support it by very recent adjudications. To show the general schemes of treason, it is competent to examine as to the object and design of the persons charged as traitors; it was the uniform practice in the cases of Hardy and Tooke.*

* See his trial, *antè* Vol. 22, p. 1033.

† See his trials *antè*, Vol. 22, pp. 753, 785, Vol. 23, p. 1019, and A, D. 1813. *post*.

* *Antè* Vol. 24, p. 199, and Vol. 25 p. 1.

But it is not kind to embarrass the Court, if it can be avoided,

Was there any other society, besides the Philanthropic and Telegraph of which you became a member?—Not till I became a member of the Defenders.

Did they call themselves Defenders?—They met in several parts of the town.

You say you were of a society called Defenders?—I believe about a fortnight after the Fermanagh militia left Dublin, Brady and Kennedy called upon me to go to Weldon to be sworn as a Defender.

Court.—You cannot ascertain the time more particularly?—No, my lord.

Court.—Neither the month, nor the day?—No my lord, for Brady was to have brought me to Hanlon, but he leaving town, Brady brought me to Weldon.

Mr. *Solicitor General*.—Who was Kennedy?—He was an apprentice to Mr. Kennedy, the glass-cutter in Stephen-street.

What was Kennedy's Christian name?—I do not know.

Mr. *Curran*.—It strikes me, that this is not a fair examination, to examine the witness to the acts of two strangers unconnected with the prisoner. It is evidence to say, that two persons carried him, the witness, to the prisoner—but to say they called upon him with the intention of having him sworn is matter of opinion, and the evidence ought to consist of facts.

Court.—Unless the witness was sworn, the evidence will signify nothing.

Mr. *Solicitor General*.—You saw Weldon the prisoner?—Yes.

Where was it?—At the stables belonging to the horse-barrack.

Court.—Were Brady and Kennedy along with you?—Yes my lord.

Mr. *Solicitor General*.—When you met Weldon, where was he?—He happened to be in the stable?—On Brady's asking for him he came out; Brady introduced me to him; we then went to a public house.

Before you got to the public house, did Weldon say or do any thing?—No to me. He only asked me how I was, and shook hands with me.

Did nothing particular pass in the manner of introducing you?—No, sir; not there.

When you arrived at the public house, what happened there?—When we went to the public house, a naggin of whiskey was called for; we went into a back parlour. Brady told Weldon he should go for Flood, who promised to meet them.

Court.—Do you mean that Brady would go for Flood?—Yes, that he, Brady, would go for Flood.

Court.—Did he mention his christian name?—No, my lord, he did not.

Mr. *Solicitor General*.—Did Flood come?—Weldon desired Brady not to be long. After some time a little boy came in, and told Weldon his supper was ready. Weldon said that was his little boy, his son.

What happened next?—Weldon went to get his supper.

Did Weldon return after?—Brady returned first, and Clayton along with him.

A *Juror*.—You were left alone then?—Except Kennedy.

Mr. *Solicitor General*.—Did Weldon return after any interval?—He did sir.

How long after?—In about a quarter of an hour.

When he returned, what happened?—After he sat down, and took a glass of punch, he said, "We had better make these two."

Whom did he mean?—Me, and Clayton.—Brady asked him if he had a prayer book? Weldon said he had.

Did he take out a prayer book?—He did and laid it upon the table.

What happened after the book was produced?—He pulled out some papers and desired Clayton and me to take hold of the prayer book in our right hands.

Do you recollect any conversation particularly relative to the object of swearing?—Not before he put the oath.

Were you told the purpose for which the oath was given?—Yes.

Were you informed of it before?—Yes.

You were brought to Weldon to be sworn?—I was.

He administered the oath?—He did.

How did it begin?—It began "I, A. B."

You have had an opportunity of seeing the paper?—Yes.

What was it?—He said it was a test.

Should you know the paper again?—Yes, sir.

[Here a paper was produced, beginning I, A. B. &c. which the witness said was the same paper he had seen with Weldon.]

Mr. *Solicitor General*.—You were sworn to the contents of that paper?

Mr. *Curran*.—I object to this as a leading question, Were you sworn to the contents of that paper? What is the answer, but I was or I was not.

Mr. *Solicitor General*.—You say you were sworn to that paper?—I was to two.

Is this one one of them?—It is.

Show him the other: Is that the other?—Yes, Sir.

[The paper beginning I, A. B. was then read. See it in the indictment.]

Mr. *McNally*. I object to this paper going in evidence to the jury, on account of a variance between it and the indictment the oath in the indictment is "I William Lawler." This paper is I, A. B.

Mr. *Solicitor General*. How were you sworn to that paper?—Did you pronounce your name—Yes: I William Lawler.

[The second paper called the catechism, was then read. See it in the indictment.]

Mr. *Solicitor General*.—After you were

sworn what happened next?—After I was sworn to these papers?

Yes; what happened?—Brady asked him if he knew of any man to head them when they were to rise. Weldon said, there was one in the North, but did not mention his name.

Had you any further conversation? Remember such as you can?—He told us after, that before the time there would be letters sent through the country to tell them when they were to rise.

What farther happened?—He was asked in what manner every one would become acquainted with it—or how would they get to know it?

By whom was he asked?—I believe by Kennedy.

You are sure the question was asked?—Yes the question was asked.

What answer did Weldon make?—He said the committee-men would acquaint them.

What farther happened upon that occasion?—Nothing, I believe, of any consequence.

At that meeting?—No, sir.

You got no instructions of any kind?—Weldon was to tell Brady of any meeting of Defenders.

Court.—Did Weldon tell Brady so?—Yes, my lord; he said he believed there would be a meeting in the next week in Thomas-street of Defenders, but did not mention the particular place.

Mr. Solicitor General.—You have sworn to two papers, which have been read; had you any opportunity of seeing these papers at any other time and with whom?—I saw them with Kennedy afterwards.

Did you ever hear Weldon say any thing of them?—Weldon told me he would give these papers to Brady before he left town.

Court.—Did he say he was leaving town?—Yes, my lord, to go to Cork.

Mr. Solicitor General.—Had you any intimation from any body then present of any meeting to be had?—Brady of a Sunday brought me to a meeting.

Court.—Did Weldon say for what purpose he would leave the papers?—He did not. He told us the signs so as to know a Defender.

Mr. Solicitor General.—Tell the jury and the Court what the signs were?—Weldon said, suppose you happen to be in company and want to know a Defender, the sign is to put the two hands joined backwards upon the top of the head, and pretend to yawn, then draw the hands down upon your knee or upon the table. Then the other answers, by drawing the right hand over the forehead and returning it upon the back of the left hand. The person in answer or reply to that draws the left hand across the forehead, and returns it to the back of the right hand. Upon shaking hands, they pressed the thumb of the right hand upon the back of the left, and not to be afraid to hurt the person, and if they asked what was the pass word "*Eliphimatis*."

Did he tell you any thing else?—No, he did not.

I observe in that oath, there is a sentence to be true to George the third, was there any conversation about that?—At the time he finished it and we kissed the book, he asked if we liked it? We said we did. He turned about, and looked to Brady, who said, "they knew what they came here for. I told them before they came."

Did any body at that time talk about the words "George the third" in the oath?

Court.—That is a leading question.

Mr. Solicitor General.—Was there any conversation about the oath?

Mr. Curran.—That is not a way in which to put a question in a case of life.

Mr. Solicitor General.—I will argue it if the Court have any doubt, and assign my reasons.

Mr. Curran.—I say a leading question is not to be put, and a question to which the answer is yes, or no is a leading question.

Mr. Justice Chamberlain.—A leading question is that which suggests the answer. Now if he answer yes to this question, and stop there, that will not do—This question then does not suggest the answer.

Mr. Solicitor General.—What did he say?—He said, laughing, that if the king's head were off to-morrow morning we were no longer under his government.

Was that explaining the oath?—The test that he put first. I asked him, was he not afraid of keeping these papers about him in consequence of being in the horse. He said, no; for they were never searched; but he did not care who saw the first paper, for the small paper was the principal. The first paper, he said, was only a cloak for the army.

Did he say, why?—On account of swearing them to be true to the king. He said, he had sworn several of them, and that they would have some objection to part of it, but for that clause.

Court.—Was it to reconcile them?—Yes.

Mr. Solicitor General.—Weldon said he would hand over the papers to Brady?—Yes.

Did you ever see them afterwards?—With Kennedy.

When?—About a fortnight after Weldon went out of town.

How came they into Kennedy's hands?—I do not know.

Did you know them?—I challenged them at a place in Drury-lane; Murphy lived in Church-street; he and I were together, and I said—

Mr. McNally objected to this evidence, and the witness was stopped by the Court.

Mr. Solicitor General.—Did Brady ever give you any intimation of any other meeting?—He brought me to one in Plunket-street.

To a meeting of what?—Of Defenders.

Were any of the same persons present that were with Weldon?

Court.—When was this?—I cannot collect.

Mr. Solicitor General.—Who was at that meeting?—Kennedy was along with me at the same time.

There were a good many there?—There was a good many there.

Was there any thing done at that assembly?

Mr. Curran.—Do the counsel think that evidence?

Mr. Solicitor General.—I do.

Mr. Curran.—What! affect a man's life by what was done at meetings, when he was an hundred miles off!

Mr. Solicitor General.—I think it evidence, though the counsel asks the question with some astonishment. It is a rule of law, settled in a variety of cases, and recognized in the very last, that it being once established that the prisoner belonged to a society—

Mr. Justice Chamberlain.—We are of opinion that this is evidence, that there is a foundation laid for it, by swearing that Weldon said, there were to be subsequent meetings, and that they should have notice of them from Brady; that is a foundation to let in evidence of what is done at those meetings.

Mr. Solicitor General.—What happened at that subsequent meeting?—They were putting down money on the table, and I was asked for six-pence, as a collection for powder—

Court.—Who asked you?—Brady desired me to put down six-pence. I told Brady I had not six-pence. Kennedy said he would lend me one; he gave me a shilling; I laid down the shilling and took up sixpence and gave it to Kennedy. It was told, that a man of the name of Lockington then in the room was a Captain of Defenders.

Mr. Solicitor General.—What else happened? What powder did you mean?—Gunpowder. I understood from them, that they wanted powder, as they were going out to get arms, but not that night.

Did you understand from the company for what they wanted the arms?—They did not say.

Mr. Baron George.—His conclusion, or his opinion is not evidence; but ask him as to facts done, or the conversations held.

Mr. Solicitor General.—Did any thing more pass?—I understood there was to be a meeting. Brady and Kennedy both told me there was to be a meeting after that.

Where did they tell you that?—At the meeting.

Did you see any of that company at any other place and where?—I did.

Where?—At Stoneybatter the corner of Arbour-hill.

Who gave you notice?—I do not know.

You saw the same company?—Some of them, Hart, Leary, Cooke and others.

Mr. Baron George.—Unless he got notice

from Brady, who was the person authorized, it is not evidence.

Mr. Solicitor General.—Did you see Brady or Kennedy afterwards?—I did.

Where?—At their own place in Stephen-street.

Were Brady and Kennedy at Stoneybatter?—No, sir.

Of what people was the subsequent meeting?—Of Defenders.

Mr. Curran.—The Court desired you not to give evidence of that.

Mr. Solicitor General.—I hope the Court have laid down no rule upon the subject.

Mr. Baron George.—We think you have not laid any foundation for the meeting at Stoneybatter.

Mr. Solicitor General.—My lords, I submit this is evidence. Upon all occasions where the proceedings of any society are let in, all their acts are thereby made evidence. And so it was in the State Trials lately, respecting the London Corresponding Society, and their conduct was evidence of overt acts. I have established the fact, that there was a meeting of a body of men called Defenders: this man was admitted into them, and the evidence goes to show, that subsequent meetings under the same appellation and obligation did assemble, and did do certain acts which will illustrate the charge against the prisoner.

Mr. Baron George.—I do not say, whether they may not be evidence; but I think you have not yet laid a foundation to let in evidence of the meeting at Stoneybatter.

Mr. Solicitor General.—You saw the oath afterwards in Kennedy's hands; upon what occasion?—Upon a meeting with Murphy.

Where?—At Drury-lane in a workshop.

You said there were certain signs communicated by Weldon by which a Defender might be known?—Yes.

Did you see them made use of upon any occasion and where?—Hart has asked me if—

Mr. M^r Nally objected to this conversation as not having been at a meeting.

Witness.—Nobody is brought to a meeting unless introduced by a person who is a member.

Court.—What do you mean by that?—There must be some person in the place who will know him.

Mr. Solicitor General.—Know him to be what?—A Defender.

Somebody went with you to Stoneybatter?—Yes; Walsh.

Who is he?—A tailor.

Was he at the former meeting?—No.

How did you know him?—As being of the Philanthropic Society.

Was he a Defender?—He was from the signs he used.

What Walsh is he?—A tailor in Fishamble-street.

Did you know any other person by the signs?—Hart and Cooke.

Were they of the meeting at Stoneybatter?—Yes; and one Leary a shoe-maker.

S

Court.—Did you see them make the signs?—Cooke came out of a place where he held a school in Stoneybatter, and shook me by the hand as a Defender.

Mr. Solicitor General.—Was the meeting at Cooke's house?—Not as I know of.

Where was the meeting at Stoneybatter?—At Murphy's, an inn where cars set up.

Court.—Was Cooke at the meeting?—Yes.

Mr. Solicitor General.—Who else?—Walsh and Hart.

Did they all make the signs?—Not there; they did at different times.

Am I to understand, that you frequented these meetings as a Defender yourself?—I did.

How long did you continue to be a Defender?—I cannot rightly tell.

Cannot you say how long?—I believe about three months.

Court.—What were the signs made use of at Stoneybatter?—Shaking the hands.

Mr. Solicitor General.—Any thing else?—No.

How did you shake the hands?—By pressing the thumb upon the hand.

In the manner Weldon had told?—Yes.

Mr. Justice Chamberlain.—Now we think there is a foundation laid to let in the proceedings there.

Mr. Solicitor General.—What were the proceedings?—Hart brought in a young man and swore him. I saw him lay a small paper upon a book.

What kind of swearing was it that was made use of?—I do not know. He told him he was brought to be sworn to be a Defender; he was not inclined to be sworn at first: Hart said he was to become a Defender, as the object was to get arms to assist the French when they would come.

Was that man sworn?—Yes.

In the same way that you were?—He told him the signs.

Did you see them shown to him?—I did.

Court.—Did you see him sworn?—I did.

Court.—In the same manner as before?—I cannot say. There was a small paper laid upon a book: I was near the door and could not get near him, there being many in the room and it a small one.

Mr. Solicitor General.—You say you continued a Defender three months?—I did, I believe.

What induced you to cease being a Defender? Did you tell any body you were a Defender?—I did.

To whom?—To Mr. Cowan in Grafton-street, after there was a meeting in Drury-lane at one Nowlan's.

Who were at that meeting?—Hart, Cooke, Dry, Turner, Lockington, Kennedy, and Flood, and Coffey.

What was done there?—We met for the purpose of getting arms.

It was soon after that meeting you told Mr. Cowan?—On the Monday.

Why did you tell him?—On account of what I heard Hart declare.

What was that declaration?—He tapped me on the shoulder, and I followed him to a window. He asked me, if Dry and Coffey were not Protestants. I said I believed they were. He said he would not sit in company with them.

Was this said aloud?—No it was not.

Then I have no right to ask it. Did you hear any thing said aloud?—They said they would meet on the Sunday following, but I could not hear rightly what passed from attending to Hart. We were called to order twice for being from the company.

Did you hear any thing pass?—Coffey was in the chair, and wanted to know, how many Defenders there were in Dublin, that there might be officers put over them, that they might be all ready.

You mentioned before, that there was a conversation about subscribing for powder; was there any conversation upon a subsequent meeting upon that subject?—Not about taking arms.

At Drury-lane?—No.

Where then?—At Stoneybatter.

What did you hear there?—I heard Hart desire some of them to go home for pistols and arms, that they might go out to take arms that night.

To whom did he say that?—To the company, at the house where the young lad was made a Defender; and after sitting some time and the others not returning he thought they would not come back; he then desired every one remaining to lay their hands upon the table, and swear on their oaths to appear there on the Monday following with pistols to go get arms.

What oath did he mean?—The Defender's oath, that they had taken. Hart was a committee-man it was said, and any person obliged to attend him when required.

You saw Hart exercise the office of a committee-man by swearing another?—I did.

Court.—Did Hart himself say he was a committee-man?—No, he did not.

Mr. Solicitor General.—You heard no other conversation at that meeting?—In about half an hour after, I said I would go home—Walsh came out and said—

[Counsel for the prisoner objected to this evidence as private conversation.]

Mr. Solicitor General.—Why did you cease to be one of the body?—In consequence of what Hart declared.

[This was also objected to.]

You say there was to be a rising and somebody would head them in the North whom Weldon did not same?—So he said.

Did Brady say any thing about the same subject?—No, he did not.

Was the motive of the rising mentioned at the time?—It was, he said, there would be letters sent.

But what was the motive?—He did not say for what it was.

William Lawler cross-examined by *Mr. Curran*.

What religion are you of?—A Protestant. Have you always been a Protestant?—Yes. Have you always professed that religion?—Except when I was asked what religion I was among the Defenders, I said I was a Roman, in consequence of what Brady said to me.

You are not, sir, upon a cross-examination under colour of an answer to give illegal evidence. I ask you, except in the case you mention now, have you always professed the Protestant religion?—Yes, sir.

Do you think you know the principles and grounds of what that religion are?—I was brought up to be a Protestant, and do not like to change.

Were you taught to believe that there was a God?—Yes, sir.

Were you taught that there was the suffering of his Son for the redemption of mankind?—Yes, sir.

Do you understand that your belief of these sacred doctrines is the foundation of the oath you have taken?—When I had taken the oath?

I ask you is it the foundation of the obligation of your oath?—Yes, sir.

Have you never, upon any occasion, declared, that you did not believe there was a God?

[The witness hesitated some time.]

Mr. Attorney General.—I do not know what the consequence of the question may be, but it exposes the man to punishment.

Mr. M'Nally.—I am prepared to show that this question is legal.

Mr. Curran.—Since the question is objected to, I will not press it. I will not ask you whether you have deliberately denied the existence of a God.—Since this protection is put about you, I am sure it is necessary for you.

Mr. Attorney General.—I did feel that it was a question which ought not to be put;—I have no reason to conclude what his answer would be.

Mr. Curran.—After this kind of argument I feel a sort of indecorum in pressing it.

Mr. Prime Serjeant.—If this sort of use be made of the question the Court will determine upon it.

Mr. Justice Chamberlain.—If he be exposed to temporal punishment, he is not bound to answer.

Mr. Curran.—It would be a different thing; and a man might say, it is my misfortune to be converted by arguments of atheists. He might have read Hume upon miracles, and adopted his notions. But I do not press it. You have said that Kennedy and Brady brought you to the prisoner's at the bar?—Yes.

Had you known him before?—Never.

You said, as you discovered their purposes,

you discontinued?—After what I heard from Hart, I went to Mr. Cowan and told him.

After the conversation with Hart, you told Mr. Cowan?—Yes.

Was not that a conversation in which he communicated the bad purposes of the meetings?—I did not like the idea of massacring all the Protestants.

Was it by Hart, that idea was communicated to you?—It was.

And as soon as that was communicated to you, you formed the design of quitting them?—Of telling what I heard.

When was the first time you knew of their bad designs?—I knew if they were to rise, that some persons were to be destroyed; but I did not think they would destroy all the Protestants.

When did you first understand that any design of this kind existed?—From the meetings I used to go to.

How long after Weldon had gone to Cork?—That I told?

That you knew of any persons being to be destroyed?—I knew at that meeting when Weldon was present.

How long after Weldon's going to Cork was it, that you had this conversation with Hart?—I do not recollect.

Compute?—I may think wrong.

Think of it?—I know the day of the month Hart told me, but I do not know the day of the month Weldon went out of town.

It was some time after, however?—It was.

Weldon said there was to be some meeting?—He said he believed there would be a meeting in Thomas-street, and when there was, he would acquaint Brady, and Brady would acquaint us.

Do you know how soon after that Weldon went to Cork?—I do not.

Do you know how long before the next meeting he went away?—I cannot tell exactly; it might be a week or a fortnight.

He had gone to Cork before?—I believe so.

Who gave you notice of it?—I was with Brady and Kennedy, and they brought me there.

Did Brady say Weldon desired him to bring you?—No.

What did he say?—He said there was a meeting of Defenders in Plunket-street, and asked me to go there.

He did not say Weldon desired him to bring you?—No.

You said there was no mention at the meeting in Plunket-street of the French; that was not until the meeting at Stoneybatter?—It was at the meeting at Stoneybatter.

Do you recollect the distance of time between the meeting in Plunket-street and at Stoneybatter?—I cannot tell.

I do not mean the day of the month; nor what month it was?—I cannot tell the time.

Did you make any speeches at Plunket-street?—No, sir.

Was there any secretary there taking down notes?—Not as I saw.

Was there any chairman putting questions?—There was a man at the opposite side of the table, near the grate, and he put down money upon the table, which he had collected; he said it was a subscription for powder.

The next meeting was where?—At Stoneybatter.

Do you remember whom you saw there?—Hart, Leary, Cooke, and Walsh.

These were all you recollect?—Weldon was not there?—No, sir.

Then there was no person at Stoneybatter, who was present at the communication with Weldon?—No.

Stoneybatter was the first place you heard any mention of the French?—It was.

Recollect yourself, because it is very material; did Weldon tell you that any part was to be taken by Cooke?—He never mentioned his name.

Nor by Hart?—No.

Nor by Walsh?—No.

That you are clear of?—Yes, sir.

Who was it that started any mention about the French?—Hart.

Did he address himself in the way of a speech to the chair?—There was no person appointed in the place. But the young man was brought in to be sworn, he appeared shy at first, and Hart told him the motives of becoming a Defender.

It was addressed to the young man?—It was, but we were all present by.

Did any one else join in it?—No.

He said we might get arms, and assist the French; and no other person said any thing upon the subject?—No, sir.

Then your evidence comes to this—That the only mention made about the French was at Stoneybatter; that Hart said it to the young man, and no one made any kind of reply. Who did you understand from Brady had told him of the meeting in Plunket-street?—I was walking with him, and he told me there was a meeting there, and asked to go there.

Did he say who told him of it?—No, sir.

I suppose you are perfectly impressed with the enormous nature of the crime of making an attempt upon the person of his majesty?—At that time he said we all lived——

I did not ask you as to that. But did you not conceive it to be a crime to make an attempt upon the life of the king?—Not at that time.

Mr. Curran.—I am sorry there was such a time; go down young man.

A Juror.—Do you now think it an enormous crime?—I certainly do.

Oliver Carleton, Esq. Sworn. Examined by Mr. Sauran.

What is that paper in your hands?—I had got a warrant from alderman James, against

Brady, Kennedy, Walsh, and Flood. The alderman desired me to send for my officers; I did so, and dispatched them to different parts. I went myself with two of them to Kennedy's the glass man in Stephen-street, at half past five in the morning——

You were at that time in a public office?—Yes. We knocked at the door some time. Two boys came down at a back door in Drury-lane. I asked them their names; they said Kennedy and Brady; I took them into custody. I had been desired to examine the fob of Kennedy's breeches, and I should find there the oath and the catechism. I did search the fob, and found them both.

Were these the papers [showing them to the witness?—These are the papers.

What was then done with Kennedy?—I took him and Brady into custody and brought them to the Castle guard.

What became of Kennedy?—I saw him in Newgate some time ago.

Oliver Carleton, Esq. cross-examined by Mr. M'Nally.

How long have you known Lawler?—I do not know him at all.

Have you ever heard any thing of him?—I never asked any person about him; nor ever heard any thing about him.

You know nothing of Weldon?—No.

Court.—Who informed you, that you would find these papers upon Kennedy?—Alderman James, who desired me to be particular in searching Kennedy, for I would find them in his breeches pocket.

A Juror.—Kennedy is a boy?—He is a very young man—So is Brady.

Juror.—What age may he be?—I am a very bad judge of the age of a person.

DEFENCE.

Mr. Curran.—My Lords, and Gentlemen of the Jury; I am of counsel in one of those cases in which the humanity of our law is, very fortunately, joined with the authority and wisdom of the Court in alliance with me for the purposes of legal protection. Gentlemen, I cannot however but regret, that that sort of laudable, and amiable anxiety for the public tranquillity, which glows warmest in the breasts of the best men, has perhaps induced Mr. Attorney General to state some facts to the court and the jury, of which no evidence was attempted to be given. And I make the observation only for this purpose, to remind you, gentlemen, that the statement of counsel is not evidence—to remind you, that you are to give a verdict, upon this solemn and momentous occasion, founded simply upon the evidence which has been given to you; for such is the oath you have taken. I make the observation, not only in order to call upon you to discharge any impressions, not supported by testimony, but to remind you also of another incontestable maxim, not only of the humane law of England, but

of eternal justice upon which that law is founded—that the more horrid and atrocious the nature of any crime charged upon any man is, the more clear and invincible should be the evidence upon which he is convicted. The charge here is a charge of the most enormous criminality, that the law of any country can know—no less than the atrocious and diabolical purpose of offering mortal and fatal violence to the person of the sovereign, who ought to be sacred. The prisoner is charged with entertaining the guilty purpose of destroying all order and all society, for the well being of which the person of the king is held sacred. Therefore, gentlemen, I presume to tell you, that in proportion as the crime is atrocious and horrible, in the same proportion should the evidence to convict, be clear and irresistible. Let me therefore endeavour to discharge the duty I owe to the unfortunate man at the bar (for unfortunate I consider him whether he be convicted or acquitted), by drawing your attention to a consideration of the facts charged, and comparing it with the evidence adduced to support them.

The charge gentlemen is of two kinds—two species of treason—founded upon the statute 25 Ed. 3. One is, compassing the king's death. The other is a distinct treason—that of adhering to the king's enemies. In both cases, the criminality must be clearly established, under the words of the statute, by having the guilty man convicted of the offence by *provable evidence of overt-acts*. Even in the case of treason and it is the only one, where by law the imagination shall complete the crime, there that guilt must be proved and can be proveable only by outward acts, made use of by the criminal for the effectuation of his guilty purpose. The overt acts stated here are, that he associated with traitors unknown, with the design of assisting the French, at war with our government, and therefore a public enemy.—2ndly, Consulting with others for the purpose of assisting the French. 3rdly, Consulting with other traitors to subvert the government.—4thly Associating with *Defenders* to subvert the protestant religion.—5thly, Enlisting a person stated in the indictment to assist the French and administering an oath to him for that purpose. 6thly, Enlisting him to adhere to the French. 7thly, Corrupting Lawler to become a *Defender*.—8thly, Enlisting him by administering an oath for similar purposes.—In order to warrant a verdict convicting the prisoner, there must be clear and convincing evidence of some one of these overt acts, as they are laid. The law requires that there should be stated upon record such an act as in point of law will amount to an overt act of the treason charged as matter of evidence, and the evidence adduced must correspond with the fact charged. The uniform rule which extends to every case applies to this, that whether the fact charged be sustained by evidence, is for the conscience and the oath of the jury, ac-

cording to the degree of credit they give to the testimony of it. In treason the overt act must sustain the crime, and the evidence must go to support the overt act so stated. If this case were tried at the other side of the water, it does not strike me that the very irrelevant evidence given by Mr. Carleton could have supplied what the law requires—the *concurring testimony of two witnesses*. I cannot be considered, indeed I should be sorry, to put any sort of comparison between such a person as Mr. Carleton and the first witness who was called upon the table. Gentlemen of the Jury, you have an important province indeed—the life and death of a man to decide upon. But previous to that you must consider, what degree of credit ought to be given to a man under the circumstances of that witness produced against the prisoner. It does appear to me, that his evidence merits small consideration in point of credibility. But even if he were as deserving of belief as the witness who followed, and that his evidence were as credible as the other's was immaterial, I shall yet rely confidently, that every word if believed does leave the accusation unsupported.

Gentlemen, I will not affront the idea which ought to be entertained of you, by warning you not to be led away by those phantoms which have been created by prejudice, and applied to adorn the idle tales drunk down by folly, and belched up by malignity. You are sensible that you are discharging the greatest duty that law and religion can repose in you, and I am satisfied you will discard your passions, and that your verdict will be founded, not upon passion or prejudice, but upon your oaths and upon justice. Consider what the evidence in point of fact is.—Lawler was brought by Brady and Kennedy to Weldon, the prisoner, in Barrack-street; what Brady said to him before, if it had been of moment in itself, I do not conceive, can possibly be extended to the prisoner, who did not assent to the words and was not present when they were uttered. Lawler was carried to the prisoner at the bar to be sworn;—And here give me leave to remind you, what was the evidence—to remind you that the expressions proved do not bear that illegal import which real or affected loyalty would attach to them, and therefore you will discharge all that cant of enthusiasm from your minds.—I wish that I were so circumstanced as to be entitled to an answer, when I ask Mr. Attorney-general, what is the meaning of the word *Defender*? I wish I were at liberty to appeal to the sober understanding of any man for the meaning of that tremendous word. I am not entitled to put the question to the counsel or to the court—but I am entitled to call upon the wise and grave consideration of the court to say, whether the seal of public accusation has affixed any definite meaning to the word?—I would be glad to know whether that expression, which is annexed to the title of the highest

magistrate, marking his highest obligation and styling him the *Defender* of the religion of the country, in common parlance acquired any new combination, carrying with it a crime, when applied to any other man in the community?—Let me warn you, therefore, against that sort of fallacious lexicography which forms new words, that undergoing the examination of political slander or intemperate zeal, are considered as having a known acceptance.—What is the word?—A word that should be discarded, when it is sought to affix to it another meaning than that which it bears in the cases where it is used. Let me remind you that a *Defender*, or any other term used to denote any confraternity, club, or society, like any other word, is arbitrary, but the meaning should be explicit. And, therefore, with regard to this trial, you are to reject the word, as having no meaning, unless from the evidence you find, it has in the mind of the party a definite explication;—For observe that the witness, such as he is—such as he was, with all his zeal for the fartherance of justice, which he was once ready to violate by the massacre of his fellow subjects—with all his anxiety for his sovereign's safety, whom he was once ready to assassinate, he, I say, has not told you, that either Brady or Kennedy or any other person stated what the principles were that denoted a *Defender*.

But I will not rest the case of my client upon that ground:—no, it would be a foolish kind of defence, because words might be used as a cloak and therefore might be colourably introduced. You, gentlemen, are then to consider what this oath, this nonsensical oath, which so far as it is intelligible is innocent, and so far as it is nonsense, can prove nothing, you are to consider, whether, innocent and nonsensical as it may appear, it was yet a cover and a bond for treasonable association.—It is not in my recollection, that any evidence was given, that the oath was conceived in artfully equivocal expressions, for forming, under the sanction of loyal language, a treasonable association.—Is one of the parties laughing, evidence, that it was treasonable, or the bond of a criminal confederation?—It is not. Is it treasonable to say, “that were the king's head off to-morrow, the allegiance to him would be at an end?”—It is not. The expressions may bring a man into dispute—may lead the mind of a jury into a suspicion of the morality of the man who used them—but nothing more. It may be asked why should there be any thing insidious?—why, but to cover a treasonable purpose, are all these suspicious circumstances?—It is not for me, nor is it the prisoner's duty to account for them in defending himself against this charge; because circumstances are not to render innocence doubtful, but it is full proof, establishing the guilt and the treason indubitably, which the law requires. Therefore, I submit, that even if the evidence

could be believed, it does not support the overt acts. Was there a word of violating the person of the king?—Any affected misrepresentation of any abuse of government?—Have you heard a word stated of the king not being an amiable king? Any words contumeliously uttered respecting his person—disrespectful of his government—expressive of any public grievance to be removed, or good to be attained?—Not a word of such a subject.—Nothing of the kind is proved by this solitary witness in all his accuracy of detail.

Was there any proposition of assisting the French in case they invaded this kingdom?—To support that charge a nonsensical catechism is produced.—There it is asked, “Where did the cock crow when all the world heard him?”—What kind of old women's stories are these to make an impression upon your minds?—Well, but what does that mean? Why, can you be at a loss?—It means to—kill the king!—Look at the record—it charges the persons with compassing the king's death, and the question about the crowing of a cock is the evidence against them.

Gentlemen, you all know, for you are not of ordinary description, that the statute of Edw. 3rd was made to reduce vague and wandering treasons—to abolish the doctrine of constructive treason and to mark out some limited boundaries, clear to a court and jury. If a man has been guilty of disrespect in point of expression to the government or the crown, the law has ascertained his guilt and denounced the punishment. But all the dreadful uncertainty intended to be guarded against by the statute, and which before the passing of the statute had prevailed in case of treason, and which had shed upon the scaffold some of the best blood in England, would again run in upon us, if a man were to suffer an ignominious death under such circumstances as the present, if equivocal expressions should be taken as decisive proof, or if dubious words were to receive a meaning from the zeal of a witness, or the heat, passion or prejudice of a jury. The true rule by which to ascertain what evidence should be deemed sufficient against a prisoner is, that no man should be convicted of any crime except upon the evidence of a man subject to an indictment for perjury, where the evidence is such as if false, the falsehood of it may be so proved as to convict the witness of perjury. But what indictment could be supported for a laugh, a shrug, or a wink?—Was there any conversation about killing the king?—No:—but here was a laugh—there was an oath to which we were sworn—and then—there was a wink; by which I understood, we were swearing one thing and meant another.—Why, gentlemen, there can be no safety to the honour, the property or the life of man, in a country where such evidence as this shall be deemed sufficient to convict a prisoner. There is nothing necessary to sweep a man from society, but to find a miscreant of sufficient

enormity, and the unfortunate accused is drifted down the torrent of the credulity of a well-intending jury.—See how material this is, Weldon was present at only one conversation with the witness. It is not pretended by the counsel for the crown, that the guilt as to any personal evidence against Weldon does not stand upon the first conversation. Was there a word upon that conversation of adhering to the king's enemies? It was stated in the case, and certainly made a strong impression, that Lawler was enlisted in order to assist the French.—I heard no such evidence given. The signs of what he called *Defenders* were communicated to him; the oath which he took was read, and he was told there would be a subsequent meeting of which the witness should receive notice from Brady.

Gentlemen, before I quit that meeting at Barrack-street, let me put this soberly to you. What is the evidence upon which the court can leave it to you to determine, that there is equivocation in the oath?—It must be in this way: you are to consider words in the sense in which they are spoken, and in writings words are to be taken in their common meaning. Words have sometimes a technical sense for the purposes of certainty.—They may also be made the signs of arbitrary ideas, and therefore I admit a treasonable meaning may be attached to words which in their ordinary signification are innocent.—But where is the evidence, or what has the witness said to make you believe that these words in the oath were used in any other than in the common ordinary acceptance? Not a word as I have heard. Weldon can be affected only personally either, first upon acts by himself, or by other acts brought home to him from the general circumstances of the case.—I am considering it in that two-fold way, and I submit, that if it stood upon the evidence, respecting the conduct of the prisoner at Barrack-street alone, there could not be a doubt as to his acquittal. It is necessary, therefore, that I should take some farther notice of the subsequent part of the evidence. The witness stated, that Weldon informed him, that there would be another meeting of which, he the witness, should have notice. He met Brady and Kennedy, they told him there was a meeting at Plunket-street; and here give me leave to remind the court, that there is no evidence, that there was any guilty purpose in agitation to be matured at any future meeting—no proposal of any criminal design. There ought to be evidence to show a connexion between the prisoner, and the subsequent meeting as held under his authority. It is of great moment to recollect, that before any meeting Weldon had left town, and in the mention of any meeting to be held, let it be remembered he did not state any particular subject, as comprehending the object of the meeting. What happened? There certainly was a meeting at Plunket-street—but there was not a word of assisting the French—of

subverting the religion—of massacring the Protestants—of any criminal design whatever.—There was not any consultation upon any such design. I make this distinction, and rely upon it, that where consultations are overt acts of this or that species of treason, it must be a consultation by the members composing that meeting; because it would be the most ridiculous nonsense, that a conversation addressed from one individual to another, not applied to the meeting, should be called a consultation.—But in truth there is no evidence of any thing respecting the French except in Stoneybatter.—There for the first time the witness says, he heard any mention of the French. Here, gentlemen of the jury, let me beseech you to consider what the force of the evidence is. Supposing that what one man said there to another about assisting the French, to have been criminal, shall Weldon, who was then for a week, 100 miles from the scene, be criminally affected by what was criminally done at Stoneybatter? It is not only that he shall be criminally affected by what was criminally done, but even to the shedding of his blood, shall he be affected by what any individual said, who casually attended that meeting!—Have you any feeling of the precipice to which you are hurried, when called upon to extend this evidence in such a manner?—without any one person being present with whom the prisoner had any previous confederation! You will be very cautious indeed, how you establish such a precedent. How did Weldon connect himself with any other meeting? Why, he said, there will be another meeting, you shall have notice.—It would be going a great way to affect him in consequence of that. I lay down the law with confidence, and I say there is no doctrine in it, so well ascertained and established, as that a man is to be criminally affected only by his own acts—the man to be charged, must be charged with overt acts of his own. There is no law—no security—no reason in that country where a man can be mowed down by our foolishly crediting the evidence, not of acts of his own, but of the acts of others, constructively applied to him, who did not attend the meeting, nor was ever aware of it.

If a man were to be exposed to the penalties of treason hatched and perpetrated in his absence, every member of society becomes liable to be cut off by mere suspicion. I say, no man could go to his bed with an expectation of sleeping in it again if he were liable to be called upon to answer a charge of suspicious words, spoken when he was 100 miles off, by miscreants with whom he had no connexion. Good God! Gentlemen, only take asunder the evidence upon which you are called upon to take away the life of this man.—“You, Weldon, are chargeable, and shall answer with your blood, for what was done at Stoneybatter.”—“Why, that is very hard, gentlemen, for I was not there—I was

100 miles off."—"Yes, but you were there—in contemplation of law—consulting about the abominable crimes of compassing the king's death, and adhering to his enemies."—"How, gentlemen, could I be there?—I knew not that there was any such meeting—I was not present at it."—"Aye, but you were there in contemplation of law, because you told Lawler, that Brady would inform him, when there would be a meeting in Thomas-street; and because you told him so, you shall be answerable with your life for what is done at any meeting, at any distance of time, at any place, by strangers whom you have never seen or heard of.—You have put your name, you have indorsed the treasonable purpose, and through whatever number of persons it may pass, the growing interest of your crime is accumulating against you, and you must pay it with your blood, when it is demanded of you."—Gentlemen, before we shall have learned to shed blood in sport—while death and slaughter are yet not matter of pastime among us, let us consider maturely before we establish a rule of justice of this kind.—Terrible rules, as we have seen them to be, when weighed upon the day of retribution. I confess it is new to me. Whatever doctrines I have learned, I have endeavoured to learn them from the good sense, and humanity of the English law;—I have been taught, that no man's life shall be sacrificed to the ingenuity of a scholium, and that even he, who has heedlessly dropped the seed of guilt, should not answer for it with his blood, when it has grown under the culture of other hands from folly to crime, and from crime to treason; he shall not be called upon to answer for the wicked faults of casual and accidental folly. No, gentlemen,—I say it with confidence,—the act which makes a man guilty must be his own; or if it be by participation, it must be by actual participation, not by construction; a construction which leads to an endless confounding of persons and things.—If I do an act myself, I am answerable for it:—If I do it by another I am answerable also. If I strike the blow, I am answerable: If I send an assassin, and he strikes the blow, it is still my act, and I ought to be charged with the criminality of it.—But if I go into a society of men, into a club or a play-house, and a crime be there committed, there is no principle of law which shall bring home to me the guilty conduct of those men which they may pursue at any distance of time.—What protection can a miserable man have from my discharging perhaps the ineffectual office of my duty to him, if the rule laid down that every word he said, or was said by a man with whom he ever had a conversation, shall affect him at any distance of time? Consider what will be the consequence of establishing the precedent, that a man shall always be responsible for the act of the society to which he has once belonged. Suppose a man heedlessly brought into an association where criminal purposes are

going forward—suppose there was what has been stated, a society of men calling themselves Defenders, and answering in fact to the very singular picture drawn of them. Will you give it abroad, that if a man once belongs to a criminal confederacy, his case is desperate—his retreat is cut off—that every man once present at a meeting to subvert the government shall be answerable for every thing done at any distance of time by this flagitious association. What is the law in this respect?—As in the association there is peril, so in the moment of retreat there is safety. What could this man have done?—He quitted the city—he went to another part of the kingdom, when the treasonable acts were committed; yes, but he was virtually among them.—What constitutes a man virtually present, when he is physically absent? What is the principle of law by which he shall be tried? It can alone be tried by that, by which the mandate or authority of any man is brought home to him.—By previously suggesting the crime, by which he becomes an accessory before the fact, and therefore a principal in treason: for by suggesting the crime he proves the concurrence of his will with that of the party committing the crime.—This is a maxim of law, that which in ordinary felonies makes a man an accessory, in treason will constitute him a principal, because in treason there are no accessaries. Suppose a meeting held for one purpose, and a totally distinct crime is committed, are those who are at the first meeting accessaries?—Certainly not; because they must be procurers of the fact done.—To make a man a principal, he must be *quodammodo* aiding and assisting—that is not proved. What then is the accessorial guilt? Did the prisoner write to the others?—Does he appear to be the leader of any fraternity—the conductor of any treasonable meeting? No such thing. I say when he quitted Dublin he had no intention of giving aid, or countenance to any meeting; the connexion between him and the societies ceased, and there is no evidence that he had any knowledge of any of their subsequent acts. Unless there be positive evidence against him, you ought to consider him out of the sphere of any association.—But still you make him answerable for what was done: if you do that, you establish a rule unknown to the sense or humanity of the law; making him answerable for what was done, not by himself, but by other persons.

Gentlemen, I feel that counsel, anxious as they ought to be, may be led farther than they intend; in point of time I have pressed farther than I foresaw upon the patience of the jury and the Court. I say the object of this part of the trial is, whether the guilt of any thing which happened in that society be in point of law brought home to the prisoner? I have endeavoured to submit that the charge ought to be clear and the evidence explicit, and that though the meetings at which

Lawler attended were guilty, yet the prisoner being absent, was not affected by their criminality. Give me leave now, with deference, to consider the case in another point of view. I say then, from what has appeared in evidence, the meetings themselves cannot in the estimation of law be guilty. If these meetings are not provably guilty of treason, there can be no retracted guilt upon the prisoner, even if the communication between them and him were proved. If there be no direct and original guilt—if they do not that, which, if done by him, would amount to an overt act of treason, *a fortiori*, it cannot extend to him. Therefore let me suppose, that the prisoner were at the time present at these meetings. Be pleased to examine this, whether if he were, the evidence given would amount to the proof required. I conceive that nothing can be more clear than the distinction between mere casual, indiscreet language, and language conveying a deliberated and debated purpose. To give evidence of overt acts, the evidence must be clear and direct. How is Hensley's* case?—a species of evidence was adduced which it was impossible for any man to deny: actual proof of correspondence found in his own writing and possession. How was it in lord Preston's† case?—evidence equally clear of a purpose acted upon; going to another country for that treasonable purpose. In every case of which we read memorials in the law, the act is such, that no man could say it is not an overt act of the means used by the party in effectuation of his guilty intent. But I said, that a deliberate purpose expressed and acted upon is different from a casual, indiscreet expression. Suppose now, that the meeting were all indicted for compassing the king's death, and that the overt act charged is, that they consulted about giving aid to the king's enemies actually at war. The guilt of all is the guilt of each, there is no distinction between them. If that meeting held that consultation, they are all guilty of that species of high treason. But if the evidence were that at that meeting which consisted of as many as are now here, one individual turned about to another, and said "we must get arms to assist the French, when they come here." Would any reasonable man say, that was a consultation to adhere to the king's enemies?—a mere casual expression, not answered by any one—not addressed to the body?—Can it be sustained for a moment in a court of justice that it was a consultation to effect the death of the king, or adhere to his enemies?—No, gentlemen.—This is not matter of any deep or profound learning—it is familiar to the plainest understanding. The foolish language of one servant in your hall is not evidence to affect all the other servants in your house: it is not the guilt of the rest. I am aware, it

may be the guilt of the rest; it may become, such. But I rely upon this; I address it to you with the confidence that my own conviction inspires; that your lordships will state to the jury, that a consultation upon a subject is a reciprocation of sentiment upon the same subject. Every man understands the meaning of a consultation: there is no servant that cannot understand it. If a man said to another, "we will conspire to kill the king,"—no lacquey could mistake it. But what is a consultation?—Why such as a child could not mistake if it passed before him. One saying to another, "we are here together, private friends—we are at war—the French may land, and "if they do, we will assist them."—To make that a consultation there must be an assent to the same thought; upon that assent the guilt of the consultation is founded. Is that proved by a casual expression of one man, without the man to whom it was directed making any answer, and when in fact every other man but the person using the expression was attending for another purpose?—But if there be any force in what I have said as applied to any man attending there, how much more forcible will it appear, when applied to a man, who was 100 miles distant from the place of meeting. If the law be clear, that there is no treason in hearing treasonable designs and not consenting thereto—though it be another offence—unless he goes there knowing before hand, the meeting was to be—here, gentlemen, see how careful the law is, and how far it is from being unprovided as to different cases of this kind; if a man go to a meeting, knowing that the object is to hatch a crime, he shall be joined in the guilt; if he go there and take a part, without knowing previously he is involved: though that has been doubted, Foster says, "this is proper to be left to the jury, though a party do or say nothing as to the consultation." If, for instance, a man knowing of a design to imprison the king, goes to a meeting to consult for that purpose, his going there is an obvious proof of his assent and encouragement. This is the law as laid down by one of the most enlightened writers in any science. Compare that doctrine with what Mr. Attorney General wishes to inculcate, when he seeks to convict the prisoner. There was a meeting in Barrack-street, and it was treason, because they laughed.—As Sancho said they all talked of me, because they laughed.—But then there is a catechism.—Aye, what say you to that?—The Cock crew in France—what say you to that?—Why I say it might be foolish, it might be indecent to talk in this manner—but what is the charge? That he consulted to kill the king? Where was it he did that? At Cork! But did he not assist?—No, he was not there:—but he did assist, because he communicated signs, and thus you collect the guilt of the party, as the coroner upon an in-

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* See it, *ant.*, Vol. 19, p. 1341.

† See it *ante.* Vol. 13, p. 646.

quest of murder, who thought a man standing by was guilty—why—because three drops of blood fell from his nose. This was thought to be invincible proof of his guilt. It reminds me also of an old woman, who undertook to prove that a ghost had appeared.—“How do you know there was a ghost in the room?”—“Oh! I’ll prove to you, there must have been a ghost—for the very moment I went in, I fainted flat on the floor!”—So says Mr. Attorney General. “Oh, I’ll convince you, gentlemen, he designed to kill the king, for he laughed.”—Weldon was chargeable with all the guilt of the meeting; he laughed when the paper was read, and said, when the king’s head was off there was an end of the allegiance. In answer to that, I state the humane good sense of the law, that in the case of the life of a traitor, it is tender in proportion to the abomination of the crime: for the law of England, while it suspended the sword of justice over the head of the guilty man, threw its protection around the innocent, to save his loyalty from the danger of such evidence: it did more—it threw its protection around HIM WHOSE INNOCENCE MIGHT BE DOUBTED, BUT WHO WAS NOT PROVED TO BE GUILTY. The mild and lenient policy of the law discharges a man from the necessity of proving his innocence, because otherwise it would look as if the jury were impanelled to condemn upon accusation without evidence in support of it, but merely because he did not prove himself innocent. Therefore, gentlemen, I come round again to state what the law is. In order to make a general assembling and consultation evidence of overt acts, there must be that assembling and the guilt must be marked by that consultation in order to charge any man, who was present and did not say any thing concurring with the guilt of that consultation. It is necessary that he should have notice that the guilty purpose was to be debated upon:—that the meeting was convened for that purpose. But let me recall your attention to this, and you will feel it bearing strongly upon that case. The silence of a man at such a meeting is not criminal to the degree here charged. Then suppose his disclaimer necessary—suppose the law considered every man as abetting what he did not disavow, remember that the wretch now sought to be affected by his silence at a meeting, was 100 miles distant from it. There might have been a purpose from which his soul had recoiled.—Is this then evidence upon which to convict the prisoner?—There is no statement of any particular purpose—no summons to confer upon any particular purpose—no authority given to any meeting by a deputy named—and let me remind you, that at the last meeting, if there were the gossipings and communications you have heard, there was not any one man present who attended the first meeting, nor is there any evidence to show, that the prisoner had ever spoken to any one man who

attended the last meeting, upon any occasion, and yet the monstrous absurdity contended for is, that although Weldon proposed no subject for discussion—although he proposed no meeting—although he did not know that any purpose was to be carried into effect, because he was then 100 miles off, he is still to suffer for the foolish babble of one individual to another.

You are to put all the proceedings together, and out of the tissue of this talk, hearsay and conjecture, you are to collect the materials of a verdict, by which you directly swear, that the man is guilty of compassing the king’s death. But suppose a man were to suggest a treasonable meeting—that the meeting takes place and he does not go—the first proposal may amount to evidence of treason if it went far enough, and amounted to an incitement—but suppose the meeting held be a distinct one from that which was suggested, and the party does not attend, it appears to me, that the act of that meeting cannot be considered as his overt act. The previous incitement must be clearly established by evidence, and I rely upon it, that the subsequent acts of that meeting, to which I am supposing he did not go, particularly if it be a meeting at which many others were present who were not at the first, I rely upon it, I say, that no declaration of any man (and more decidedly if it be by a man not privy to the original declaration), can be evidence upon which a jury can attach guilt to the party. It is nothing more than a misfeasance, which is certainly criminal, but not to the extent of this charge. To affect any man by subsequent debate, it must be with notice of the purpose, and if the meeting be dictated by himself, it is only in that point he can be guilty; because if you propose a meeting for one purpose, you shall not be affected by any other—no matter what the meeting is—however treasonable, or bad; unless you knew before for what purpose they assembled, you cannot be guilty virtually by what they have done.

Gentlemen, I do not see that any thing farther occurs to me upon the law of the case, that I have not endeavoured in some way to submit to you:—perhaps I have been going back somewhat irregularly. There remains only one, and that a very narrow subject of observation. I said that the evidence upon which the life, and the fame and the property of a man should be decided and extinguished, ought to be of itself, evidence of a most cogent and impressive nature. Gentlemen, does it appear to you that the witness whom you saw upon the table comes under that description.—Has he sworn truly?—If he has—What has he told you? As soon as he discovered the extent of the guilt, he quitted the fraternity.—Do you believe that?—Hart told him that ALL the Protestants were to be massacred. “I did not like,” said he, “the notion of massacring ALL.”—Here is the picture he draws of himself—he an ac-

complice in the guilt—I did not ask him, “have you been promised a pardon?”—I did not ask him, “are you coming to swear by the acre?”—But I appeal to the picture he drew of himself upon the table—what worked his contrition?—Is it the massacre of one wretch?—He was unappalled at the idea of dipping his hands, and lapping the blood of part of the Protestant body—it was only heaps of festering dead, that nauseated his appetite, and worked his repentance and conversion—is your verdict to be founded upon the unsupported evidence of a wretch of that kind? His stomach stood a partial massacre—it was only an universal deluge of blood that made him a convert to humanity! And he is now, the honest, disinterested and loyal witness in a court of justice.—What said he farther?—As soon as I found from Hart their schemes, I went to Mr. Cowan. You saw, gentlemen, that he felt my motive in asking the question—“you abandoned them as soon as you found their criminality.”—Because had he answered otherwise he would have destroyed his credit; but as it is he has thrown his credit, and the foundation of it overboard. If Lawler be innocent, Weldon must be so—he saw that, and therefore he said, he thought it no crime to kill the king—therefore, gentlemen, my conscience told me, that if he felt no remorse at plunging a dagger into the heart of his king, he would feel no trembling hesitation at plunging a dagger into the breast of an individual subject by perjured testimony.—Those workings of the heart which agitate the feelings at the untimely fate of a fellow creature touch not him, and he could behold with delight, the perishing of that man who had a knowledge of his guilt. He has no compunction, and he betrays no reluctance at drinking deep in the torrent of human blood, provided it leaves a remnant of the class. What stipulation can you make between a wretch of that kind, and the sacred obligation of an oath? You are to swear upon his oath—a verdict is not to be founded upon your own loyalty—not upon what you have seen or heard spoken disrespectfully of the government or the king. Your honest, pure, and constitutional verdict can be founded only upon that sympathy that you feel between your own hearts, and the credibility of the witness. It is a question for you—will you hazard that oath upon the conscience of such a man?—A man influenced by hope and agitated with fear—anxious for life, and afraid to die, that you may safely say “we have heard a witness, he stated facts which we could not believe;—he is a wretch: for he thought it no crime to murder his king, and a partial massacre appeared to him to be meritorious!” Is it upon the testimony of that nefarious miscreant—the ready traitor—the prompt murderer—I retract not the expression, if I did, it would be to put in its place a word of more emphatic and combined reprobation—is it upon that evidence, I say, you

will pronounce a verdict, establishing the most aggravated degree of criminality known to our law upon the person of that man, supposed by the law to be innocent until his guilt be proved?—I know not whether the man be a good subject or a bad one: it is not necessary for me to know, nor for you to inquire; but I exhort you, finally, to remember, that in Great Britain, so anxious has the law been to guard against the perfidiousness of such men, that no less than two concurrent witnesses are necessary *there* in cases of treason—I call not upon you to adopt that law; but to show you the principle, that there should be strong evidence satisfying the mind of a jury. I commit the decision of this case to your consciences, not to your humanity—I commit it to your determination upon the sound principles of justice and law.

After Mr. Curran had sat down, he rose again, and said he had closed without stating any evidence from a conviction, that it would be unnecessary.—It is desired to produce some evidence which I will not oppose in a case of life—There is evidence to show that Lawler is not credible.

Samuel Galland was then called, and sworn on the part of the prisoner, but was not examined.

James Reynolds sworn.—Examined by Mr. M^r Nally

Do you know the prisoner?—I have known him for 17 years.

What has been his general character?—I never heard of any thing improper, before this trial—he worked as a breeches-maker, and was an industrious man.

Thomas O’Neil, sworn.—Examined by Mr. M^r Nally

Do you know the prisoner?—I do.

How long have you known him?—I have known him 30 years.

What has been his general character?—A very good one: he was an honest, laborious man.

Mr. M^r Nally then addressed the jury in a short speech for the prisoner, apologizing for his brevity, by stating that he was much indisposed, and that any exertion upon his part was rendered less necessary by the very splendid defence by Mr. Curran.

Mr. Prime Serjeant in reply, spoke to the evidence very fully.

Mr. Justice Finucane.—Gentlemen of the Jury; In this case James Weldon stands indicted of two species of treason, declared to be such by the stat. 25 Ed. 3rd. One of these is for compassing and imagining the death of the king; and the other is for adhering to the king’s enemies. Now, gentlemen, as to the first of these charges, that of compassing the king’s death, such is the anxious care with which the life of the king is guarded by our law, that the offence is not confined to acts, or attempts directly against the life of

the king, as by lying in wait to assassinate, or by murdering, but it extends to every thing deliberately done, by which the life of the king might be endangered. Thus, it has been always held, and is now well established, that all attempts to dethrone or imprison the king are overt acts of compassing his death; for all experience, and all history show, that the necessary consequence of such dethronement or imprisonment has been the death of the king.—So also, adhering to the king's enemies, or encouraging them to invade the kingdom, are overt acts of imagining his death; and that I take it, does fairly follow to the conviction of every man, when he considers that the ultimate object of the king's public enemies is his death and destruction. The king is the first soldier of the state, and the sword of the enemy is as much levelled at his life, as at that of any soldier in his army; and therefore every act of adhering, countenance, or assistance to the king's enemies, does necessarily fall under that branch of the statute, which makes the offence of compassing and imagining the death of the king. Therefore, gentlemen, although these two offences are made distinct by the statute, compassing his death, and adhering to his enemies, yet every overt act, which proves the person adhering to the king's enemies, is also an overt act of compassing the death of the king.

By overt act, nothing more is meant, than an act done by the party to effect his treasonable intent. It is called an overt act, that is, an open act, the means used by the party to accomplish his treason, that is to say, to put the king to death, or adhere to the king's enemies. No man is answerable for the tacit imagination of his heart, unless he does something to effect his traitorous intent. To God alone, the searcher of all hearts, is he answerable for his thoughts and intentions. But human tribunals cannot take cognizance of *thoughts*, except so far as they are manifested by *acts*. Therefore in every indictment of treason, the overt acts, the means used to effect the purpose, must be set forth, because it is against them, the accused is to make his defence. But though the indictment should, as it generally does, state several overt acts, as means used by the party to effect his purpose yet, if there be any one applicable to the treason charged, it is sufficient. Now, gentlemen, in the present indictment, the overt acts of both species of treason are one and the same; and from what I before mentioned, they may be so, as every act of adhering to the king's enemies, is an overt act of compassing the king's death. The overt acts in this indictment are these: first, after reciting that a war is depending between the king and the persons exercising the powers of government in France, (and here I must observe, that although no proof be given of a war existing between the king and the persons exercising the powers of government in France, yet the

notoriety of the fact is sufficient evidence of it) the indictment, I say, recites the war, and then charges that the prisoner did unite with false traitors called Defenders, and become one of a party to aid the French, in case they should invade this kingdom. This is stated as the manner in which he intended to carry into effect his traitorous purpose. Secondly, that he did consult with other traitors unknown, in the joining and assisting with the French. Thirdly, that he did unite with traitors unknown, and become one of a party called Defenders, united to subvert the government as by law established. But, gentlemen, this overt act being thus laid, not stating that there was any plan formed to effect it by force, we are of opinion, that this overt act does not fall within either species of treason; therefore you are not to apply your consideration to that overt act. The fourth is to the same purport, and you will also put it out of your consideration, that he did unite with others unknown to subvert the Protestant religion, and consult about the means, &c. The court are of opinion, that does not form any overt act of compassing the king's death, or adhering to his enemies. The fifth is, that the prisoner did, with other traitors unknown in order to enlist William Lawler, to be aiding and assisting the French, in case they should invade this kingdom, administer an unlawful oath. I will not read this to you now, gentlemen, because, when I state the evidence, I shall lay it before you in its proper place. The sixth is, that in order to procure and enlist William Lawler to aid the French, he did administer and instruct him to repeat an oath, declaration or catechism, which I will also state by-and-by. The seventh overt act relates to a conspiracy to subvert the government, and not being laid to be intended by force, you will throw it out of your consideration. The eighth is, that to procure William Lawler to assist the French, he administered an oath to him.

These, gentlemen, are the overt acts laid in the indictment, and in my apprehension, those, which are material for your consideration, may be classed under two heads: First, that he did unite with Defenders, and meet and consult with them, for the purpose of joining and assisting the French, in case they should invade this kingdom. Secondly, that he did administer a certain oath and engagement to Lawler, to enlist, bind, and engage him to aid and assist the French, in case they should invade this kingdom. These two species of overt acts, are clear overt acts of adhering to the king's enemies, which is one of the treasons;—so that if this indictment did not charge the treason of compassing and imagining the death of the king, and was confined solely to the charge of adhering to his enemies, that species of treason, if proved will be clearly supported. Therefore, gentlemen, if it should appear, beyond all doubt, that these acts were done by the prisoner or

any one of them, then the prisoner is clearly guilty of adhering to the king's enemies; and also guilty of the other species, not directly, but by consequence. But unless you shall be perfectly satisfied, that they, or some of them were done, and that his object was to assist the French, whatever other objects he had, you must acquit him of the offence charged.

It will be now your duty, to consider the evidence most minutely; and for this purpose I will state the evidence which has been given in this case. The first witness for the crown, was William Lawler: he mentioned—(Here his lordship recapitulated the evidence with the utmost accuracy and precision. His lordship also read the papers as stated in the indictment and proved, and then proceeded.) If you, gentlemen, are satisfied, that this was an engagement to bind this man to aid the National Convention of France, it is a clear overt act of adhering to the king's enemies; because it is procuring another person to assist the enemies of the king, if you shall be of opinion, that the words *National Convention* mean the National Convention of France, and if you believe that it was put to this man. Another object of the paper is to destroy all ————s. If you shall be of opinion, that the blank is to be filled up with the word "*King*," it goes to substantiate the other species of treason in the indictment, because our king is included in the number, and every act done to dethrone the king is comprehended in that species of treason of compassing his death. Then the other paper, to which the witness says he was sworn together with the engagement, states that the person taking it is "to be true and faithful to king George the 3rd, whilst I live under the same government." These words are deserving of your consideration, because it is a qualification of the engagement, only, whilst he lives under the same government, and how far other parts also qualify it, and make it pleasing and agreeable to others, is also for your consideration. Now, to be sure, if this oath were taken alone and by itself, there is nothing in the terms of it, that could tend in any degree to support the overt acts charged in the indictment. But connecting it with the test taken at the same time, it deserves a very different consideration; and it will be for you, gentlemen, to consider how far one throws light upon the other. If the object of them be to bind this man to the National Convention to dethrone all kings there can be no doubt, that they support the treason charged in the indictment.

After the oath was taken, the witness mentioned to you, that Brady asked the prisoner, if he knew any person who was to head them, when they rose; that he answered there was one in the North. There is no overt act of a rising, or a conspiracy to rise: but if you believe, that this rising was to aid the purposes of the society, and to aid the French, it goes to sup-

port the overt acts. (Here his lordship stated the remainder of the evidence for the Crown, and that which was given on the part of the prisoner). Here, gentlemen, the evidence closed. It would add materially to the weight of it, if alderman James showed, how he acquired intelligence of these papers being upon the person of Kennedy. If Lawler told it to him, or to any other person, it would add to his testimony, because connecting it with his testimony, it would fortify what he said upon his direct testimony, that he saw them with Kennedy. But consider whether it is possible the information could have come from any other quarter. However at the same time, you are also to consider whether it might not be an after thought. You are to determine, from the whole testimony of Lawler, and the credit you give to him.

Then it is asked, what is the word *Defender*. There is nothing criminal in the word itself,—it is a name assumed by a set of persons. But the question is, what are the purposes and designs of these people?—Of that you are the proper judges. If their designs and intentions were, to adhere to the French and to support them, the charge of adhering to the king's enemies is supported. If their designs were not such, the indictment is not supported. But considering the oath and the test together; supposing them administered, as sworn by Lawler, they show very strongly what their designs were;—that they designed to adhere to the National Convention of France, if you believe those words mean the convention of France,—and part is to dethrone all kings, if you believe that the blank is to be filled up; that shows the design of the Defenders, and the witness if believed, shows the design of this man, in administering it. What were their designs farther appears from what Hart declared aloud, at Stony-batter; for he declared aloud that they were to get arms to assist the French. So that there he declared what the object was. The oath and test declares it also, if you believe the evidence of Lawler.

But it is objected, that the acts for which a man is to answer, must be his own, and that the prisoner was not present at those declarations. But here are his own acts, if you believe the witness, for he is charged with administering this oath and test, an engagement to assist the National Convention, and to dethrone all kings, if you believe these expressions, and the blank are to be so applied. Whatever the designs of the papers were, they are declared by the prisoner, to be designs of Defenders, and to be his own principles and designs. So that if it appears from his own acts, it is brought home to himself, and the declaration of the prisoner agrees with the declaration of Hart;—if they do, Hart is a Defender, and explains what the object of the test is; namely, to raise arms for the French. But this is said not to be a conspiracy, unless it was a consultation or get-
together

ral talk by a meeting. Why, certainly, it may, or may not affect a person present, according to the circumstances of the case, of which you are the proper judges. But here it is sworn, if you believe the evidence, that Hart spoke aloud in the meeting, and desired those present, to go out for arms. That was a communication with the whole company, —to seize arms to enable them to be more assisting to the French. This is the explanation which Hart put upon it himself, in the hearing of the company, and assented to by the company, for they go away to get arms. Then he tells you, that some of the company remained, and those who went away not returning immediately, such as remained were sworn in the manner he described, that they would attend on the Monday following, with arms, to go and seize arms.

That is an act done by Hart not to an individual, but addressed to such of the body as remained, and was assented to by them all. But, gentlemen, I only mention this as obviating a difficulty thrown out by the counsel. But the whole is for your consideration, and I cannot but observe, that all depends upon the testimony of Lawler. Certainly one single witness is competent to prove the crime of high treason, although it is otherwise in England: but we must go according to the law of this country, by which one witness is competent to prove the fact. But I say the whole depends upon the testimony of Lawler, and before you find a verdict upon his testimony, you must be satisfied with the truth of it. It has been stated, and no doubt the fact is so, that he is a witness subject to great objections. By his own confession, he is an accomplice in the treason. By his own confession, at one time he would not scruple to attempt the life of the king. At present, he is of a different way of thinking. Also by his own confession, he did not shudder at the idea of shedding Protestant blood, but that he stopped at the idea of massacring *all*. These are certainly strong objections to impeach the character of the witness. This man is a competent witness, and so far a credible one, because if he were not credible, it would not be of any utility to examine him. You, gentlemen, have heard his story, and you have seen the manner in which he told it to you; that is matter for you to consider, and to balance against the objections urged to impeach his character. There is no attempt made to discredit the man by producing evidence against him. It has been said, that there has been no attempt by the prisoner to show he was not at the time in Barrack-street, where the oath was administered, that fact being capable of proof, and in that respect, to disprove what was said by Lawler. But that receives this answer, and a very full one in my opinion, that no particular time is stated, and therefore he could not be prepared with the proof which has been mentioned. Witnesses have been examined to the

prisoner's character, but such evidence is of little weight in this case.

Mr. Justice *Chamberlain*.—Gentlemen of the Jury. I think it my duty, upon a case of this importance, to make some few observations; but I shall neither recite the indictment, nor the evidence, which have been precisely stated to you already by Mr. Justice Finucane, and I think he has accurately stated the law to you. However, it might be thought a dereliction of my duty, if I did not say something upon a case of such vast importance. There are two charges in this indictment, one is, compassing the death of the king;—the other is adhering to the king's enemies, now at open war. There can be no doubt that every mean taken to adhere to the king's enemies is an overt act, or in other words a mean of compassing the death of the king. But it is by construction it is so. It is so settled by a train of authorities, and cannot be disputed; but I do not think it necessary to trouble you with that branch of the statute. I shall confine myself to the branch of adhering to the king's enemies, because it is plain to every man, and cannot be mistaken; for every man must see at once, what is and what is not, adhering to the king's enemies. Gentlemen, there are several overt acts stated, but I think they may be reduced to two, because the rest are derivative from them. The first is this, that the prisoner did, in order to enlist and procure William Lawler to be aiding and assisting the French, the enemies of the king, administer an oath of the import you have heard. By that oath, Lawler undertook, of his own good will, to be true to his majesty, king George the 3rd, whilst he should live under the government. Lawler was, without that oath, bound to allegiance, during the joint lives of himself and the king; and what was the reason of shortening the duration of the allegiance, is, I think, inferable from the expressions, because wherever he should go, it was his bounden duty to preserve his allegiance to the king; and Lawler is made by this oath, declaration, or catechism, call it what you will, to be obedient to superior officers, to committees and others. Who were these committees and superior officers meant by this instrument, is for your consideration. In my apprehension, it is upon the face of it, internal evidence, that some association of an unlawful nature was on foot. There is no account given of it by the prisoner; but *ex vi terminorum* it implies, that some association was on foot, and some superiors appointed, but how created, or what the committees were, does not appear from the instrument. But the witness has explained, what they meant by committee-men, and all that is evidence to go to you, and the instrument appears to reflect credit upon the witness in his exposition of it. There is another part of it, which is an engagement to meet, when the committee pleases. So that here is an engagement upon oath, to attend such conven-

tions of this body as the committee requires, and, gentlemen, if you believe that, my opinion is, that any persons being assembled, using private confidential signals, communicated by the prisoner, they are evidence to go to you, serving as a comment upon the instrument, if it required one;—it is supplemental evidence to show what the intention of the prisoner was in administering this oath, provided you believe he did so.

This is one of the overt acts. Another of the overt acts is, that he did with intent to enlist and persuade Lawler to be aiding the French, traitorously administer another oath, which you have heard more than once repeated. The striking parts are these:—Lawler binds himself by this instrument, under the obligation of an oath, “to quell all nations,”—“dethrone all kings,”—and “to be concerned with the National Convention.”—The innuendo as laid is perfectly plain and natural; but you, gentlemen, are the judges whether it is plain, natural, and obvious or not. In my opinion, no other possible innuendo could be stated. This instrument being entered into at one and the same time with the other, may serve as a comment upon the other:—they may be considered as one and the same instrument, and if there be any thing ambiguous in either, you may consider them together, and see whether they do or not bind the parties taking them, under a solemn engagement to assist the French convention. If you believe that, the inference necessarily follows, that you must be satisfied of the intent. But I think it would be refinement to go farther than the instrument itself, and if you believe these engagements were entered into by Lawler, and that they were administered by the prisoner, binding him thereto, I think upon the face of the instrument itself, the traitorous intent is apparent. But, gentlemen, it is not the only evidence, because I have said that the acts of persons, in the secrets of the prisoner, will serve you to explain this paper, and this, as to the law of the case is the whole of it; and I believe there never was a case involving less law in it. It is a plain and manifest adherence to the king's enemies, provided you understand this paper as I do.

But now, gentlemen, there is certainly a question very material, not only to the prisoner, but to the community, and that is, what degree of credit a man, standing in the situation of Lawler, is entitled to?—He is an accomplice coming into court, admitting himself guilty of a crime, of which if convicted, he could not be received; and acknowledging, that so debased was his mind, that he did not think it any crime to murder his king—that the schemes he was embarked in might be attended with the murder of several of his Protestant brethren:—These, gentlemen, are serious objections. One of the most impressive obligations of an oath cannot be supposed to exist in this case—the moral obligation of it—because you cannot conceive that the mind

of a man, embarked in such a conspiracy, is influenced by moral motives. See also, whether he be not deeply interested—whether he might not accuse an innocent man to save himself. But that objection is not so strong here as in ordinary cases, because the man was not in custody when he disclosed this charge; because if he were, undoubtedly his swearing to this matter would be more questionable, than if he were at large. These, gentlemen, are considerations which certainly call for your deepest attention. There is another matter which I must submit to you, and that is, whether this man's testimony, in his accusation of the prisoner, is in any measure corroborated by other circumstances; for it is seldom to be found in the history of our law, that any jury has ventured, upon the single unsupported testimony of an accomplice, to find a person guilty. You may perceive, however, that treason and conspiracy must often go unpunished, if the law laid it down universally, that a jury should not act upon the testimony of an accomplice. Juries do frequently act upon such evidence, and with the concurrence of the ablest and best of judges; and it has been decided by judges in both countries, that a jury may do so, but it is their duty to examine it most attentively; and I must say, that it has very seldom happened; that a jury has found a verdict of conviction upon such single testimony alone. Now see whether there be any circumstance to corroborate him. He said, that the papers, which he identified, were in the possession of Thomas Kennedy; and Mr. Oliver Carleton has sworn, that he did find these very papers, to which Lawler stated he was sworn, in the possession of Kennedy. Now, certainly, gentlemen, it must strike you most obviously, that this is more confirmatory of the testimony against Kennedy, than against Weldon; and his testimony may be well confirmed against Kennedy, and not against the prisoner at the bar. There is evidence to confirm this man's testimony as to one person charged, and not as to others. I must exhort you then, to attend to his testimony, and see whether it be consistent in all its parts, and to recollect the manner in which it was given, and if your understandings are absolutely coerced to believe him, then you must find the prisoner guilty. But if from the special circumstances any rational doubt rests upon your minds, it will be your duty to acquit the prisoner.

Mr. Baron George.—Gentlemen of the Jury; I can say, and I am sure with great truth, that it is scarcely necessary or possible to add any thing to what you have heard from the charges of the two judges, who have addressed you. But, gentlemen, I think it my duty to submit a very few short observations to you.

Gentlemen, it appears that by far the most important consideration for you is; “what degree of credit is due to the testimony of Lawler.” For this purpose you are to consider the ac-

count given of himself, and the appearance he made upon the table this day. You will recollect his having mentioned, that he went over to the neighbouring kingdom, and there became a member of the Corresponding Society—that he obtained a letter from Mr. Eaton to Mr. Rowan, which he delivered, and you have heard the manner in which he has conducted himself since, from the account he has given you of himself. Gentlemen, it must, no doubt, be a very great stain upon the character of any man, and a blemish upon his credit, that he had, at any period of his life (and that at no distant one), consented to assist in the murder of his king, and of many of his fellow-subjects who never did him any injury. However, gentlemen, you will also consider what led him to remorse, whether the discovery was made for the purpose of justice, or to protect himself from the consequences of that conspiracy. Consider how far it is probable that this man might entertain these designs, and relinquish them afterwards, when the period for carrying them into effect approached nearer to him. I say, gentlemen, the offence which he confesses himself capable of entertaining and of carrying into execution must leave a stain upon his credit; therefore you are to hear his evidence with the greatest caution. You will also recollect, that when it was put to him upon the table, whether he had declared certain impious opinions, how he hesitated.

No doubt, gentlemen, it was the duty of the Court, to prevent the question being urged, as not being perfectly legal, but juries and judges have their eye-sight, and they are to be governed by their senses, and if it be shown to you, that his moral character is exceptionable, his religious character is liable to exception also. Then, gentlemen, you will take the account of the transactions he mentioned from his account, and the manner in which he gave it, and connect them with the other evidence produced. No doubt, there has been no witness examined, to say this man is not to be believed upon his oath: nor is his testimony contradicted; nor upon his cross-examination does he appear to have contradicted himself. Gentlemen, you will also consider, whether he is corroborated in his testimony,—and how far he is so you are the constitutional judges,—by the testimony of Mr. Carleton. He says, he was directed by the magistrate to search the box of Kennedy, upon whom the oath and the catechism were found; it does not appear how the magistrate came by that information, to know where that oath and catechism were so deposited. But the witness Lawler swore, that they were the identical papers upon which he was sworn, and that he saw them a fortnight after he was sworn, in the possession of Kennedy. It must undoubtedly be, that the magistrate got the information from Lawler, or some other person.

Judge Finucane has said, that if it ap-

peared by evidence, that Lawler had told it before the arrest, it would strengthen his testimony more than if it appeared from any other quarter. You, gentlemen, are the judges to determine upon the weight of our observations, to consider the facts and circumstances of the case, and decide upon them all, according to your consciences.

Gentlemen, in this indictment there are two offences laid. But in my humble apprehension that offence to which you ought to direct your attention, is that of adhering to the king's enemies; and before you can find the prisoner guilty of that offence you must see, that some one of the overt acts of that species of treason has been proved; and in order that you may not be embarrassed by any matter of refinement, or have your understandings entangled by construction, you ought to direct your attention to those overt acts, which charge the prisoner with having, in order to procure Lawler to be aiding to the French, in case they should invade Ireland, administered to him the oath you have heard; and taught him to rehearse the catechism you have heard. These are two of the overt acts, and if it appear that the prisoner did those acts, with the treasonable purpose imputed to him, you will be bound to find him guilty. Gentlemen, the proof of having administered that oath and teaching Lawler to rehearse that catechism consists of the evidence of the things said and done at Barrack-street.—The contents of the oath and catechism have been very fairly commented upon from the bench; therefore I shall make no farther observation upon them than this, that as to the oath, the indictment lays the offence as if administered only in a single instance to Lawler, but the form of the oath shows that more was intended than is laid in the indictment, because it is not merely the form of an oath to be used in that instance only, but it begins, "I, A. B." showing that it was not to stop with him, but was intended to swear as many as the purposes of the party might require.

Gentlemen, if there be any thing equivocal in the oath and catechism, you will look into the rest of the evidence to explain it, and I do think, that most of the evidence given can be useful for no other purpose than as matter of explanation, in case any doubt is raised upon your minds. The oath, the catechism—the signs used—the pass-word—appear to have been the test and tokens by which Lawler was admitted to the several associations which he attended.—And, gentlemen, lest it should be mistaken by you or any other person, it is right to settle that matter explicitly. I think you are to consider the other evidence, which you have heard of what was done in the other assemblies, subsequent to that in Barrack-street, as explanatory of what was done in the assembly at Barrack-street. Because it appears, that Lawler was admitted into those subsequent assemblies in conse-

quence of the signals communicated to him at Barrack-street.—He was known by one of the party to have been sworn in. If there were any thing doubtful, I say, what passed in those several assemblies, to which the witness got admittance, will be fair matter to explain what passed at the first. And if it were proved, that the designs of these subsequent assemblies, were innocent and lawful, that would, on the part of the prisoner, clear up the transaction in Barrack-street, if there were any thing doubtful in it. Then, gentlemen, if there be any thing doubtful, and it appears that by the means imparted to him he got admittance into assemblies where treasonable practices were going forward, will not that be evidence to show the object of the proceeding in Barrack-street? Therefore you see, that if the original transaction was criminal, the subsequent proceedings explain his guilt; and if they were innocent, they will shew his innocence. Therefore, gentlemen, I think the Court were right in letting in that evidence, to give all the light to the case which the law allows. Gentlemen, you are to consider this case under all its circumstances; and you are to consider, and be satisfied with the account given by Lawler upon the table; you are to determine, whether you think it true or false; and if, under the circumstances, you believe it to be true, you are bound to find the prisoner guilty;—but if you feel such a doubt as reasonable men may entertain, you are then bound to acquit him.

[The Jury then retired, and came back in about twenty minutes.]

Clerk of the Crown.—How say ye, gentlemen of the Jury, have ye agreed to your verdict?

Jury.—We have.

Clerk of the Crown.—Who shall say for you?

Jury.—Our foreman.

Clerk of the Crown.—Gaoler, make a bar, set James Weldon forward—How say you, gentlemen of the jury, is James Weldon guilty of the treason whereof he stands indicted, or not?

Foreman.—Guilty.

The prisoner was thereupon brought back to Newgate, and the Court adjourned to next day.

Wednesday, December 30th.

James Weldon was this day ordered up for sentence.

His indictment was read, and he was asked what he had to say, why judgment of death should not be pronounced against him?

Mr. M^r. Nally.—My lords, I shall humbly submit to your lordships, that the judgment in this case ought to be arrested. Each count in an indictment is in the nature of a separate

indictment, and therefore each count should contain all the legal and essential requisites of an indictment: if any of these essential requisites be omitted, the indictment is vitiated, and the judgment must be arrested. Every indictment, and therefore every count ought to have a formal conclusion; here the first count has not such conclusion. It does not say against the allegiance—against the peace—or contrary to the statute. Therefore the first count is to be thrown out of consideration. But the jury having, notwithstanding the direction of the Court, returned a general verdict, it became necessary to examine the second count, and that is objectionable for uncertainty in the specification of the offence. The indictment is founded upon the statute, and ought to pursue the words of it.—The statute says, “if a man be adherent to the king’s enemies, and give them aid and comfort either *within the realm, or elsewhere*”—The disjunctive particle in this sentence creates a second offence, perfectly distinct from the first. One offence is adhering to the king’s enemies *within the realm*: the other is adhering to them *without the realm*. This is somewhat a new case. I have taken pains to search for precedents of indictments for adhering to the king’s enemies, and have found but one in the reign of Elizabeth, but it is so vague and such a riddle as not to hold a moment. But referring to the words of the statute, I wish to know, for which offence this man is indicted in the second count. The indictment should state that he adhered to the king’s enemies *within the realm*, or that he adhered to them *without*, according to the words of the statute constituting the crime. There is a strong reason for this. Suppose he were acquitted, he might be indicted for adhering to the king’s enemies *without the realm*, and he could not plead *auterfois acquit*, because he would be told the indictments were not the same. Therefore this indictment being essentially defective in omitting the words of the statute, the man is not convicted according to law. I take this to be a rule, that where two things are included within a sentence, separate in their nature, a man cannot be indicted indiscriminately for both, but the indictment should distinguish between them. There might have been a third count for adhering to the king’s enemies *within the realm or without*, and then a general verdict would prevent any objection.

Mr. Attorney General.—My lords, it will be very unnecessary for me to give you much trouble. It is said, you should arrest the judgment for error in both the counts. It is said each count should be considered in itself as a complete indictment. For the substance of the charge, the rule is so. But where there are many counts, each specifying an offence, the indictment may have one general conclusion, going to the whole. As here, to simplify the case, the prisoner is charged with compassing the death of the king, and the

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next count specifies a new charge, that of adhering to the king's enemies. Both being thus specified, and there being prefatory matter, stating what the prisoner was and his designs, then comes the general conclusion of the indictment, applying to both counts. If any man of common understanding, clear of technical modes of reasoning, read this indictment, he will find so; and it is according to the order used since the introduction of the English law, the conclusion always going to every count contained in the indictment. After having stated what the designs were, it says, he is guilty of compassing the king's death, and of adhering to the king's enemies, and then there is a general conclusion not confined to one or other count, but going to both offences included within the same statute. I believe all that which was so much to the disgrace of the law, in taking technical objections, has been exploded, in a variety of instances; and provided substantial justice has been done, courts of justice do not attend to objections of this sort, unless they are absolutely bound so to do. If in the common course of language this conclusion can be applied to both charges, your lordships will do so, according to the modes now adopted upon cases of this sort, and it will be sufficient to refer your lordships to your own understanding, without farther argument.

As to the second objection, it is *somewhat scouring of substance*, that the indictment should state whether he adhered to the king's enemies, either within the realm or without. An objection of that sort being made, I expected that some precedent would be shown, or some authority that would warrant the objection. This indictment is conformable to the precedents I have seen, and when your lordships look into the statute, you will find there can be no ground for the objection—"within the realm or elsewhere"—is not part of the description of the crime, as set forth upon the face of the statute. The crime is "adhering to the king's enemies"—that is what the statute has declared—"If any man levy war, or be adherent to the king's enemies in the realm, and gives them comfort elsewhere"—if he adhere to them, by giving them comfort in the realm or elsewhere—in a word, as if the statute said—"If he give them aid, let them be where they may"—let the act done be within the realm or without, he is alike guilty of adhering to

the king's enemies. Your lordships see by the context, they are superfluous words, because it clearly shows, that if aid be given any where, the party giving it, will be guilty.

[Here Mr. Attorney-general was stopped.]

Mr. Justice *Chamberlain*.—We will not trouble you any farther, and it would not be fair to the man, if we by our conduct insinuated, that the objections were likely to prevail. We are of opinion, that the objections are not founded; that the conclusion in sense and according to precedents goes to both counts. So it is in all declarations. Therefore there is nothing in the first objection.—We are also of opinion, that the essence of the offence is adhering to the king's enemies, and it is immaterial where they are. It is an offence not constituted by statute, but an offence at common law, and the statute only says, that no man shall be indicted but for treason, as there specified it is not created by the act.—And indeed, if it were necessary, it does substantially appear, because two overt acts state, that an open and public war is carried on by the French, and that the prisoner was adhering to the persons exercising the government of France. So that if it were necessary, it is substantially charged that he was adhering to the enemies, without the realm.

Mr. Justice *Finucane*.—I agree, that the conclusion goes to both counts; and with regard to the last count, I think the statute is completely complied with in this indictment. "Be adherent to the king's enemies within the realm or elsewhere."—At the time this statute was passed, no treason could be tried, but treason within the realm, and that is the treason specified, "giving them aid within the realm"—then are added the words, "or without"—How is the charge here? that the prisoner at Lifey-street in the city of Dublin.—The locality is annexed to the person adhering, not to the enemy to whom he adhered. Therefore this is a sufficient charge within the words of the statute.

Mr. Baron *George*.—I concur perfectly with the rest of the Court.

Mr. Baron *George* then, after a suitable and pathetic exordium, pronounced the sentence of the law, that the prisoner be executed on the 2d of March, 1796.

Weldon was executed at the front of Newgate, pursuant to his sentence.

613. Proceedings on the Trial of MICHAEL MAGUIRE for High Treason, before the Court holden under a Commission of Oyer and Terminer at Dublin, on Thursday December 24th : 36 GEORGE III. A. D. 1795.*

COUNTY COURT.

Thursday, December 24.

MICHAEL MAGUIRE was indicted for high treason in compassing the king's death and adhering to his enemies, in support of which a number of overt acts were stated, the principal of which was, that in order to enlist **Thomas Roden**, a sifer in the 104th regiment, to join with, and become a Defender, to aid and assist the persons exercising the powers of government in France, he did keep and detain him from his regiment for the space of ten days, and did give him during that time, by way of stipend, at the rate of six-pence per day.

The indictment is not set forth in this case, the prosecution having been given up, and therefore the reporter would not have mentioned it, except to notice a proceeding which had the appearance of novelty to some; but being sanctioned by the approbation of three judges, may serve as a precedent in cases under similar circumstances.

The prisoner having pleaded not guilty, and a jury being sworn, Mr. Prime Serjeant stated the case on the part of the crown, and the witness was called.

Thomas Roden, sworn—Examined by Mr. Attorney General

Where were you born?—In Staffordshire.

What brought you here?—I enlisted for a soldier.

In what regiment?—In the 104th regiment.

What was the nature of your duty in that regiment?—A sifer.

Did that regiment come to Ireland?—Yes, please you, my lord, it came to Belfast.

Did you come with it?—Yes.

How long ago?—Three quarters of a year.

Where did it go to?—From Manchester.

But after you came to Belfast, where did you go to?—To Dublin.

Look at the prisoner; did you ever see him before?

[The witness hesitated.]

Which is the man; point out Michael Maguire?—I neither see Michael Maguire, nor Murphy.

Do you know Michael Maguire?—If I should see him, I should know him.

Do you see him?

[The Witness looked about, but made no answer.—He was then desired to look through all the seats, beginning with the first row, until his eyes reached the dock.—After doing so, he said—I do not see him].

Look again in the same manner?—I do not see him.

[The witness was then desired to withdraw, and the sub-sheriff of the county was desired not to suffer any person to speak to him.]

Mr. Attorney General.—My lords, if I believed that the witness had thrown his eyes towards the dock, I should desire to have the prisoner acquitted immediately. But the gentlemen round me say, he did not throw his eyes to the dock. I shall now desire, as has been practised at the Old Bailey, that the prisoner may be brought forward to the front seat, and that some persons, as nearly of his own condition in appearance as may be should be placed there along with him.

This was accordingly done. The gentlemen of the bar retired from the front seat—the prisoner was placed there, and five or six persons, taken from the crowd of auditors, were placed along with him.

The witness was then brought in, and desired to look at the several persons, sitting in the first seat, beginning at one and looking on to the other.

The witness did so, and after looking at them for some time, he laid his finger upon the head of a person who was not the prisoner.

The witness was ordered off the table, and the prisoner was acquitted.

MURPHY was then put upon his trial, given in charge to the jury, and the witness not being produced, the prisoner was acquitted.

The Court adjourned.

* Taken by Wm. Ridgeway, esq. barrister at law.

614. Proceedings on the Trial of JOHN LEARY for High Treason, before the Court holden under a Commission of Oyer and Terminer at Dublin, on Monday December 28th : 36 GEORGE III. A. D. 1795.*

CITY COURT.

Monday, December 28th 1795.

JOHN LEARY was arraigned upon the following indictment, the caption of which being the same as that set forth in the case of Weldon, is omitted.

County of the City of Dublin to wit. { "The Jurors for our lord the King upon their oath present that an open and public war on the twentieth day of August in the thirty fifth year of the reign of our sovereign lord George the third by the Grace of God of Great Britain France and Ireland King defender of the Faith and so forth and long before was and ever since hitherto by land and by sea hath been and yet is carried on and prosecuted by the persons exercising the powers of government in France against our most serene, illustrious and excellent prince our said lord the now king and that John Leary of the city of Dublin yeoman in the said county of the city of Dublin a subject of our said lord the king, of his kingdom of Ireland well knowing the premises but not having the fear of God in his heart; nor weighing the duty of his allegiance and being moved and seduced by the instigation of the devil as a false traitor of our said lord the now king his supreme true lawful and undoubted lord the cordial love and true obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and with all his strength intending the peace and common tranquillity of this kingdom of Ireland to disturb and the government of our said lord the king of this his kingdom of Ireland to subvert and our said lord the king from his royal state title honour power imperial crown and government of this his kingdom of Ireland to depose and deprive and our said lord the king to death and final destruction to bring he the said John Leary on the twentieth day of August in the thirty-fifth year of our said lord the king and on divers other days and times as well before as after that day at Suffolk-street in the parish of St. Andrew in the city of Dublin and in the county of the said city of Dublin aforesaid with force and arms falsely wickedly and traitorously did com-

" pass imagine and intend the said lord the king then and there his supreme true and lawful lord of and from the royal state crown title power and government of this his realm of Ireland to depose and wholly deprive and the said lord the king to kill and put to death and that to fulfil and bring to effect his most evil wicked and treasonable imaginations and compassings aforesaid he the said John Leary as such false traitor as aforesaid and during the said war between our said lord the king and the persons so exercising the powers of government in France to wit on the said twentieth day of August in the said thirty-fifth year of the reign aforesaid at Suffolk-street aforesaid in the parish of St. Andrew aforesaid and in the county of the said city of Dublin aforesaid with force and arms falsely and traitorously did join unite and associate himself with divers false traitors to the jurors aforesaid as yet unknown and did then and there with such false traitors to the jurors aforesaid unknown enter into and become one of a party and society formed and associated under the denomination of Defendants with designs and for the purpose of aiding assisting and adhering to the said persons so exercising the powers of government in France and so waging war as aforesaid against our said sovereign lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland and afterwards and during the said war between our said lord the king and the said persons so exercising the powers of government in France and enemies of our said lord the king on the twentieth day of August in the said thirty-fifth year of the reign of our said lord the king and on divers other days, as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the said city of Dublin aforesaid he the said John Leary as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did with divers other false traitors whose names are to the jurors of our said lord the king as yet unknown, then and there meet and assemble to confer treat and consult for and about the adhering aiding and assisting of the said persons exercising the powers of government in France as aforesaid and being enemies of our said lord the king in case they should invade

* Taken by W. Ridgeway, Esqr.

"or cause to be invaded this his kingdom of Ireland and afterwards to wit on the twentieth day of August in the thirty fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said John Leary as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously associate and unite himself to and with divers other false traitors unknown to the jurors aforesaid and did along with the said false traitors to the jurors unknown enter into and become one of a party and society united and associated under the denomination of *Defenders* with design and for the end and purpose of deposing, subverting and overturning the government of this kingdom as by law established and so associated and united as aforesaid did then and there and on divers other days and times as well before as after that day with divers other false traitors to the jurors aforesaid unknown meet and assemble to confer consult and deliberate on and about the means and measures for effecting his aforesaid traitorous and nefarious designs and purposes and afterwards to wit on the said twentieth day of August in the said thirty-fifth year of the reign aforesaid and on divers other days and times as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid and county of the city of Dublin the said John Leary as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously associate and unite with divers other false traitors to the said jurors as yet unknown and did along with said false traitors to the jurors aforesaid unknown enter into and become one of a party and society united and associated under the denomination of *Defenders* with design and for the end and purpose of subverting and overturning the Protestant religion in this kingdom as by law established and so associated and united as aforesaid did then and there and on divers other days and times as well before as after that day meet and assemble with divers false traitors as yet unknown to confer consult and deliberate on the means and measures for effecting his aforesaid traitorous and nefarious designs and purposes and afterwards to wit on the said twentieth day of August in the said thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with

force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said John Leary as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes did then and there with divers others false traitors whose names to the said jurors are yet unknown wickedly and traitorously in order to enlist and procure a liege subject of our said lord the king then and there being whose name is to the jurors aforesaid as yet unknown to be aiding and assisting the persons so exercising the powers of government in France, and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland did then and there traitorously administer a certain profession declaration and catechism to the said person whose name is to the jurors aforesaid as yet unknown to the purport following that is to say

"I am concerned.—So am I.—With who?
 "—With the National Convention (meaning thereby the National Convention of France).
 "—What is your designs?—On freedom.
 "Where is your designs?—The foundation of it is grounded in a rock,—what is your designs? Cause to *queal* all nations. De-throne all —gs (meaning thereby all kings), to plant the true religion in the hearts, be just.—Where did the cock crow when the whole world heard him?—In France.—What is the pass word?—Elphismatis."

"And afterwards to wit on the said twentieth day of August in the said thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street in the Parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said John Leary as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously in order to enlist procure and corrupt a subject of our said lord the king whose name is to the jurors aforesaid as yet unknown to be aiding and assisting to the said persons so exercising the powers of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland and to bind and engage himself thereto, did then and there traitorously administer to and instruct the said subject of our said lord the king whose name to the jurors aforesaid is as yet unknown to rehearse and repeat a certain profession declaration and catechism to the purport following that is to say
 "I am concerned.—So am I.—With who?
 "—with the National Convention (meaning

“thereby the National Convention of France).—What is your designs?—On freedom.—Where is your designs?—The foundation of it is grounded in a rock.—What is your designs?—Cause to *queal* all nations, dethrone all—*gs* (meaning thereby all kings), to plant the true religion in the hearts, be just.—Where did the Cock crow when the whole world heard him?—In France.—What is the pass word?—Eliphismatis.’

“And afterwards to wit on the said twentieth day of August in the said thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin and county of the city of Dublin aforesaid the said John Leary as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names are to the said jurors as yet unknown wickedly and traitorously in order to encourage corrupt procure and enlist the said person whose name is to the jurors aforesaid as yet unknown to become one of a party or society formed for the purpose of subverting the government of this kingdom of Ireland as by law established did then and there traitorously encourage corrupt procure and enlist the said person whose name is to the jurors aforesaid as yet unknown to join himself to and become one of a party or society formed and united for the purpose of subverting the government of this kingdom of Ireland as by law established and afterwards to wit on the said twentieth day of August in the said thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and in the county of the city of Dublin aforesaid he the said John Leary as such false traitor as aforesaid in further prosecution of his treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names are to the said jurors as yet unknown wickedly and traitorously in order to enlist and procure said person whose name is to the jurors aforesaid as yet unknown to be aiding and assisting to the persons exercising the powers of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland and then and there traitorously administer and cause to be administered an unlawful oath to the said person whose name is to the jurors aforesaid as yet unknown to the purport following that is to say

‘I, A. B. of my own good will and consent, do swear to be true to his majesty

“king George the third, whilst I live under the same government—More, I swear to be true, aiding and assistant to every brother bound to me by this application, and in every form of article from its first foundation, January 1790.—And in every amendment hitherto—and will be obedient to my committees, superiors, commanders, and officers in all lawful proceedings and not otherwise, nor will I consent to any society or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother, nor in any violation of the laws but to protect my life and property, and the lives and properties of my brethren—And I will subject myself to my committee-men in all lawful proceeding, and not otherwise, during the reign of his majesty king George the third, whilst I live under the same government—I likewise swear I will meet when and where my committee will please, and will spend what is pleasing to president and company—I will not quarrel nor strike any person whatsoever, knowing him to be such, but will live lovingly and friendly with every one under that denomination—I will not rise any fight or quarrel on account of my present intrus, or back that for unto my brotherhood.’

“And the said jurors of our said lord the king upon their oath further present that an open and public war on the said twentieth day of August in the thirty-fifth year of the reign of our said lord George the third and soforth and long before was and ever since and hitherto by land and by sea hath been and is carried on and prosecuted by the said persons exercising the powers of government in France against our most serene illustrious and excellent prince George the third now king of Ireland and soforth and that the said John Leary a subject of our said lord the king of his kingdom of Ireland well knowing the premises not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our most serene and illustrious and excellent prince George the third now king of Ireland and soforth and contriving and with all his strength intending the peace of this his kingdom of Ireland to disturb and the government of this his kingdom of Ireland to subvert he the said John Leary on the twentieth day of August in the thirty-fifth year of the reign aforesaid and on divers other days and times as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the said city of Dublin aforesaid unlawfully and traitorously was adhering to aiding and comforting the said persons

"exercising the powers of government in France and then being enemies of our said lord the king as aforesaid and that in the prosecution performance and execution of the said traitorous adhering of him the said John Leary to the persons exercising the powers of government in France and being enemies of our said lord the present king and the said persons so exercising the powers of government in France to wit on the said twentieth day of August in the said thirty-fifth year of the reign aforesaid at Suffolk-street aforesaid in the parish aforesaid and in the county of the city of Dublin aforesaid with force and arms falsely maliciously and traitorously did join unite and associate himself to and with divers false traitors to the jurors as yet unknown and did then and there with such false traitors to the jurors aforesaid as yet unknown enter into and become one of a party and society formed and associated under the denomination of Defenders with design and for the purpose of aiding assisting and adhering to the said persons so exercising the powers of government in France and so waging war as aforesaid with our said sovereign lord the king in case they should invade or cause to be invaded this his kingdom of Ireland"

The indictment then set out the same overt acts as are contained in the first count.

The prisoner pleaded Not Guilty, and the sheriffs having returned their panel, it was called over.

Sir James Bond, bart. challenged peremptorily by the prisoner.

Hugh Carnecross, esq. challenged peremptorily by the prisoner.

Joseph Dickinson, esq. same.

Lundy Foot, esq. same.

Hugh Crothers, esq. sworn.

George Overend, esq. sworn.

Daniel Geale, merchant, sworn.

Samuel Tyndal, merchant, sworn.

William Dickinson, merchant, challenged peremptorily by the prisoner.

William Galway, merchant, same.

William Thompson, merchant, same.

Isaac Maunders, merchant, same.

Robert King, merchant, set by on the part of the crown.

Richard Jackson, merchant, sworn.

John Minchin, merchant, challenged peremptorily by the prisoner.

Simon Verpoyle, merchant, same.

David Weir, merchant, same.

Henry Charles Sirr,* esq. same.

Samuel Middleton, esq. same.

Benjamin Woodward, merchant, sworn.

Mead Nesbitt, merchant, set by on the part of the crown.

John Rutherford, merchant, same.

George Armstrong, merchant, sworn.

Thomas Prentice, merchant, set by on the part of the crown.

Thomas Wilkinson, merchant.

Jonas Pasley, merchant, challenged peremptorily by the prisoner.

Edward Armstrong, merchant, sworn.

Godfrey Pillsworth, merchant, set by on the part of the crown.

George Carleton, merchant, challenged peremptorily by the prisoner.

William Mullock, merchant, set by on the part of the crown.

John Farange, merchant, challenged peremptorily by the prisoner.

William M'Kenzie, merchant, challenged peremptorily by the prisoner.

Archibald Tredennick, merchant, sworn.

Edward Whitehead, merchant, set by on the part of the crown.

James Atkinson, merchant, sworn.

Hugh Cochran, merchant, challenged peremptorily by the prisoner.

Frederick Dugdale, merchant, set by on the part of the crown.

Cornelius Gautier, merchant, sworn.

THE JURY.

Hugh Crothers.

George Overend.

Daniel Geale.

Samuel Tyndal.

Richard Jackson.

David Weir.

Benjamin Woodward.

George Armstrong.

Edward Armstrong.

Arch. Tredennick.

James Atkinson.

Cornelius Gautier.

The prisoner was then given in charge to the jury, and Mr. Attorney General stated the case pretty much to the same effect as in Weldon's trial, the reporter therefore does not think it necessary to insert it, particularly as anything new which arose in the case, was fully observed upon in speaking to the evidence.

William Lawler was produced, but before he was sworn.

Mr. M'Nally.—Do you believe in the existence of a God, and rewards and punishments hereafter?—I do.

The witness was then sworn.—Examined by Mr. Prime Sergeant.

Of what country are you?—Of Ireland, sir.

To what profession or trade were you bred?—To the Protestant religion.

To what trade?—The gilding.

Where have you worked?—In Ireland.

Any where else?—In England.

At what time have you worked there?—In the year 1791.

What time did you return?—Two years.

During your residence in England, were you of any society?—Yes.

What Society?—The London Corresponding Society.

After your return to Ireland, did you become a member of any society in Dublin?—I did.

* The celebrated Town Major of Dublin.

Of what society?—I do not know the name of it.

What became of that society?—It was dissolved.

Did you become a member of any other?—I did.

Of what?—The Telegraph and Philanthropic societies.

These were two different societies?—Yes.

Do you remember the name of any person who was a member of either, or which of them?—John Burke belonged to them both.

Do you recollect what the general subject of discussion, or debate was?—After Burke found the first society was dissolved, and he was expelled the college, he collected ten persons, I was one, and he told us the object of each was, to get ten, and each of these ten was to get five, as they would have a number sufficient to take the castle. One hundred were to get soldiers' clothes, by which the citizens would think the soldiers had joined them.

In the course of last summer did you become a member of any other society?—When we had made up our ten, we were to inform Burke, and having made up my ten, I did inform him, and he got a room in High-street for the different tens to meet in.

Did they meet?—They did, and he called it the Philanthropic society; and any member proposed any friend he thought proper, and he accordingly was elected a member.

Pray, sir, have you ever heard of any party or set of men, known by the name of Defenders in this country?—I have.

Were you ever admitted a Defender?—I was, in Barrack-street.

And by whom?—By Weldon.

What Weldon?—Of the Black horse.

Do you recollect the manner in which you were admitted?—By an oath administered, or declaration; two papers were read.

Where are they?—I do not know.

I will show them to you [producing two papers]—look at these papers?—These are the papers I was sworn to by Weldon.

Was any other communication made to you; any sign, or signal?—Weldon showed me the signs, so as to know a Defender.

Show them to the Jury?—Weldon told us when we were in company, and wanted to know a Defender the sign was, to put the two hands joined backwards upon the top of the head, and to pretend to yawn, then to draw the hands down upon your knee, or upon the table. Then the other answers by drawing the right hand over the forehead, and returning it upon the back of the left hand: The person in answer, or reply to that, draws the left hand across the forehead, and returns it to the back of the right hand. Upon shaking hands, they pressed the thumb of the right hand upon the back of the left, and not to be afraid to hurt the person, and if they asked, what was the password, *Eligistic*.

Did you ever see these papers in the possession of any man of the name of Kennedy?—Yes, sir.

And you told Alderman James, that he would find them with Kennedy?—Yes.

Where?—At the post-office.

In what part about Kennedy?—In his job.

After you were sworn in Barrack-street, was there any mention of any future meeting?—Weldon was asked when there would be any meeting: he said there would be a meeting in Thomas-street, he believed, in the course of the next week, and he would inform Brady to let us know.

How soon after you were sworn, was there any meeting, at which you were present?—I do not know. It was of a Sunday.

Can you form any belief as to the time, whether a week, or a month?—It was not long after.

Where was that meeting?—In Plunket-street; it was Brady and Kennedy brought me there. I was walking on a Sunday, and they brought me there.

Do you know John Leary?—Yes, sir.

Point him out to the Court and the Jury?—There he is in the dock.

Be so good as to tell the Court and the Jury, who were at the meeting in Plunket-street, as you know?—Brady and Kennedy.

Who else?—I cannot say exactly.

Can you say, was Leary there?—I think the first place I saw him was at Stoneybatter.

Then am I to understand you to say, whether he was at Plunket-street, or not?—He might be there for aught I know.

And you do not know he was at Plunket-street?—I do not.

How long after the meeting at Plunket-street was the meeting at Stoneybatter?—I cannot say.

I do not mean that you should tell exactly—It was after the meeting at Plunket-street. Yes, sir.

You saw Leary there?—Yes.

You are positive you saw him there?—I did.

How came you to go there?—Walsh, a tailor, told me of it.

And you went with him there?—Yes.

In what character did you go there?—As going to Defenders.

Was any person sworn at that meeting?—Hart brought in a young man, and another, along with him.

Was there any oath administered, or any book produced?—Hart had a book in his hand. The young man seemed unwilling at first. Hart said, the object was, to assist the French, when they would come.

Did you hear him make that declaration?—I did, and all present, or else they must be deaf.

Was Leary present, I ask you again?—He was.

Was there any objection made to what Hart said by any body?—No, sir.

After the man was sworn, did Hart do any

thing else?—He had sent some to get arms that night; pistols, and swords:—he desired them to bring what they had, as they intended to go out that night; that they knew a young man at one of the houses where they intended to go. Leary seemed to be a little in liquor at the time.

After the young man was sworn did any thing else happen?—Hart gave the signs and the pass-word, *Eliphimatis*.

Did he give the same sign that Weldon gave you?—He did.

Did you hear the purport of the oath administered by Hart?—No.

After swearing, was there any proposal made by Hart?—He desired such of the young men as were present, who had not arms, to go and get arms.

Court.—Had any one arms there?—I had a sword and pistol.

Mr. *Prime Serjeant*.—Was there any other person with arms?—I did not see any.

Did Hart exercise any authority, or do any other act?—He was a Committee-man, and in consequence of the persons not returning, he desired every person present to come to the table, and lay their right hands upon it, and on their oath to come the next night with arms.

Did the company obey?—Every one that was present.

Was Leary present?—I cannot say, he was present just at that time.

You say, he was present at the time the oath was administered?—He was.

And at the time the declaration was made by Hart of the motives?—Yes.

After that conversation, were any arms taken?—Not as I know of. I saw Murphy since, he told me arms were taken.

Had you any conversation with Leary?—I had, at his own place.

When was that?—In the course of the week after.

What did he tell you of the proceedings of that night?—He said they went to one house, where there was a great noise, and a ringing of a bell—that they had a stone to throw the pannel in; he had a blunderbuss in his hand, and had gone round to the corner of the house to see the person ringing the bell; he could not see the bell, and believed it was in the chimney—not seeing it, he came back and struck the pannel with the butt-end of the blunderbuss, and broke in the pannel, and also broke the stock of the blunderbuss.

Court.—Where was this house?—At one side of Blackhorse-lane.

Court.—Was it the same night?—I cannot say.

Court.—What night did you understand it was?—I understood from Leary it was the same night that I had left them, that they had gone out.

Mr. *Prime Serjeant*.—What more did he say was done afterwards?—He said, he ran up stairs, saw the person ringing the bell, and tripped the legs from under him.

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I forget whether you said he gave any account of what became of the blunderbuss?—He said, that after tripping the legs from under the man, they took away the arms that were in the house.

But what became of the blunderbuss he had?—I understood from him, that he had left it with a person to be mended.

Did you see Hart afterwards?—I did.

Mr. *Prime Serjeant*.—Had you any conversation with Hart as to what passed?

Court.—Was Leary present?

Witness.—No.

Court.—Then this is not evidence.

Mr. *Prime Serjeant*.—My lords, I do not wish to press it. But here was a direction given by Hart, and I want to show how it was followed up.

Mr. Justice *Chamberlain*.—I think it is not evidence, unless Leary was present.

Mr. *Prime Serjeant*.—Do you know what became of the arms which were taken that night?—Leary told me afterwards, when we were walking up Blackhorse-lane, and we came to a house, that it belonged to a Committee-man, and that the arms were lodged in a hay-stack belonging to that man.

Court.—Do you recollect the day?—I do not, it was either of a Monday or Tuesday.

Was it the Monday, or Tuesday after the meeting?—No. He had a pair of women's shoes, which he had mending, and was going home with them; we went up Blackhorse-lane, and we turned into a house. There were some men sitting down in a place where they had drawn home some hay. Leary spoke to one of them, who he told me afterwards belonged to the place. He pointed out to me the place where the hay had been, under which the arms had been put. But the hay was not then in the place at that time we saw it. He said the man told him a person came to take away the arms as the hay was to be removed.

Court.—You say there was no hay upon the place where the arms had been?—There was not. Both the hay and the arms were removed, for I could not see any.

Do you say the prisoner told you the arms had been removed?—He said, the man who owned the place told him, that he gave notice to the people to remove the arms, as he was to take away the hay.

Mr. *Prime Serjeant*.—You said the owner of the hay was a Committee-man?—So Leary told me.

Describe the situation of the house?—The house was on the right hand of the lane, but we went in at a gate, and when we entered the gate, the house was on the left side.

Did Leary tell you with whom he left the blunderbuss?—I do not recollect.

Did he tell you the place?—No.

Were you at any meeting, after the meeting at Stoneybatter?—I was, at Nowlan's in Drury-lane.

Were you at any other?—I was at Toole's,

X

the upper end of Cork-street, where I was taken.

Did you know there was to be a meeting there?—I did.

Did you suppose it to be a meeting of Defenders?—It was: after the army had been after some of them, I saw Murphy, who had been taken up, and was afterwards let out.

But did you ever tell any person, that there would be a meeting at Toole's in Cork-street?—I did.

Whom?—Mr. Cowen and alderman James.

You told of this meeting?—I told them of it before. It was after I gave my information that these persons went to Toole's. I knew they were to meet there to be out of the way—Dry and others were to meet—but I had given informations of them before, and it was settled, that I should be there.

You talked of a meeting at Nowlan's?—Yes: in Drury-lane.

Who was at that meeting?—Coffey was in the chair; Dry, Turner, Cooke, Hart, Lewis, Kennedy, and Flood.

You have seen all these people at different meetings of Defenders before?—I had not seen Lewis—Leary was not there.

Do you recollect any particular conversation with Hart there?

Mr. *M^r Nally*.—My lords, I object to this evidence. The witness has sworn, that Leary was not present, and therefore no conversation can be evidence.

Mr. *Prime Serjeant*.—I have the authority of this Court for this evidence upon the former trial.

Mr. *Baron George*.—That came out upon the cross-examination.

Mr. *Prime Serjeant*.—When did you discover all you have told, and why and to whom?—I told it to Mr. Cowen in Grafton-street.

Why did you tell it?—In consequence of what Hart told me.

What was that?

Mr. *M^r Nally*.—I object to that question.

Mr. *Prime Serjeant*.—This is not to affect the prisoner. Surely, the witness may tell what was his motive.

Court.—The private conversation between him and Hart was objected to upon the former trial, and refused to be admitted upon the direct examination. It afterwards came out upon the cross-examination. Any motive or avowal by Hart in the absence of Leary is not evidence.

Mr. *Prime Serjeant*.—When was the meeting at Toole's?—On the Saturday after.

Was there any general proposal of any kind made at Nowlan's?

Mr. *M^r Nally*.—I object to that.

Mr. *Justice Chamberlain*.—We are of opinion, that all acts done at general meetings are evidence; but the private declarations of an individual, not communicated to the body, or at all adopted by it, are not evidence.

Mr. *Prime Serjeant*.—Was there any gene-

ral proposal made to the meeting?—Coffey wanted to know, what number of Defenders were in Dublin, that they might have officers.

Was there any money collected?—None, but two-pence a piece for the beer that was drank.

Was there any proposal, or demand for money at Plunket-street?—I was asked for six-pence.

For what purpose?—To buy powder.

Was there any money given?—I said I had none. Kennedy gave me a shilling; I laid it down and took up six-pence and gave it to Kennedy.

What brought you to Plunket-street?—Brady and Kennedy brought me there. They said they were all Defenders.

Court.—Was there any signal made use of?—No, there was not.

William Lawler cross-examined by Mr. *M^r Nally*.

You have sworn, that you believe in God. Have you made any declaration to the contrary?—Never. I was at a meeting with Galland, John Burke, and Le Blanc, who would wish to persuade me, that there was no Saviour. But I never heard any one say, or deny, that there was a God.

And you always, I presume, have held a contrary doctrine?

Court.—He is not bound to answer that question.

Mr. *M^r Nally*.—In the case of the King v. Taylor, Peake's N. P. 11, a witness was asked as to his belief in Jesus Christ, that was not thought a proper question. But to ask him as to his belief of a God is a legal question.*

You said you were taught to believe in the Protestant religion, and that there was a Saviour?—I was.

Have you always, and do you yet adhere to those opinions?—These men, whom I mentioned before, had with their doctrine almost persuaded me, that there was no Saviour, but I saw since through it.

You mentioned the names of Galland and John Burke; why did you not mention the Christian name of Galland? As you are a Christian, do you not know the Christian name of Galland?—I do not know.

Are there not two persons of that name?—There are; the man I speak of was an engraver.

You have seen through all their false doctrine. How long have you been converted?—Since that time; three quarters of a year.

Was it since you gave information to alderman James, or before?—It was before.

You were a Christian before you went to alderman James?—Yes.

Is that the truth?—It is.

You were bred a carver and gilder?—I was.

* See Phillipp's Law of Evidence, pp. 18, 19, 20, 3rd edit. And Peake's Law of Evidence, 155, et seq. 4th edit.

To whom did you serve your time?—I was bound to Mr. Robinson in College-green.

Does he now live in Capel-street?—I have seen the name over a shop there, but I do not know whether he is the man, or owner of the shop.

Do you not believe, that the Jack Robinson, who formerly lived in College-green, and the Jack Robinson in Capel-street is the same person?—I believe so.

Have you never seen him in Capel-street?—I might, or not in that shop.

Do you not know, as a gilder, every man of eminence in that line keeping a shop?—I do not recollect ever seeing at that place, the name of Robinson up, only that time.

Do you believe there are two Cowens carrying on the same business in Dublin?—There are; himself and his son.

They live in one house?—As I hear.

If there were another, should you not hear of it?—I believe so.

And by the same rule should you not know, if there were two of the name of Robinson?—I have heard he is the same person.

How long did you live with him?—About three years.

How long were you bound to serve him?—Seven years.

Then you served only three out of seven?—That is all.

You were a confidential servant to him?—I was an apprentice to him.

He had always a good opinion of you as an honest and fair young man?—I cannot say that he had at one time, or he would not have done what he did.

What was that?—He gave me a good horse-whipping.

He never made any charge upon your integrity?—He did.

What was the charge?—There were women who used to work at the gilding business over the front shop, and the men at carving in the rooms over that up stairs. There were some small frames missing. Mr. Twigg and one Ryan were called up to the gilding-room, and had some conversation; Mrs. Robinson called me to go to the master for a shilling, and I understood, that afterwards Twigg informed him, I was listening. I said I was not; they brought me up and charged me with taking those things. I denied it. Mr. Robinson brought up a rattan with a ferrule upon it, and he laid on me. In the evening Mrs. Robinson brought me some supper. I could not take it at the time and got my things and went away; I went to a woman, who had nursed me, and the people in the house not hearing me, I slept in the little-house all night, and when the men went out in the morning, I told the woman what happened between me and Jack Robinson.

Was that the only charge against you?—That was all.

Do you forget the punch-ladle, Mr. Lawler?—No.

Were you never charged with stealing a punch-ladle from Champion?—Never.

Were you never charged with stealing a punch-ladle, which your mistress sent by you to a silversmith?—No.

You are an excellent workman?—I cannot say.

What made you leave Robinson?—In consequence of that leathering.

How soon after you left Mr. Robinson, did you go to England?—After serving the remainder of my time to Williamson in Grafton-street I went to Gallagher, he having spoken to me before I was out of my time.

Court.—Did Robinson assign your indentures?—I was informed he ran away.

Mr. M^r. Nally.—You went to England?—I did.

And were a member of the Corresponding Society?—Yes.

Did you honour that society with the name of Lawler?—No.

What then?—With the name of Wright.

What Christian name?—William Wright.

What was your motive for changing your name?—I had listed in the 29th regiment foot.

How long did you remain with that regiment?—About a month.

You were an attested soldier?—I was.

By virtue of your integrity, Mr. Wright, when you deserted, did you not break the oath you had taken?—I do not know what oath I took; but I took one.

After you had deserted, you went into the Corresponding Society by the name of Wright?—I did.

Where did it usually meet?—One division met in Bishopsgate-street.

Was that the division you belonged to?—Yes.

Did they meet in the day, or in the night?—In the evening.

Is not Bishopsgate-street one of the most public streets in London?—It is a wide street.

And a great thoroughfare?—There are great many pass there; but Cheapside is more public.

After you deserted, you went to London to conceal yourself?—I did live there.

You went there publicly?—I cannot say publicly, because there was not one in a hundred who knew me.

Did you walk the streets publicly, or go in a sedan-chair to the society?—No, nor in a hackney-coach.

You have led a remarkable life, since you came to Dublin?—An honest life; I never cheated any man.

How long is it since you were wounded?—The Philanthropic Society, Burke, Le Blanc, Flood, and several more were together: a man belonging to Ringsend, I can't think of his name, was in custody in a watch-house, and they agreed on a meeting to go there and take him out, which we did, and one Thompson, who had a hanger, cut me when I went in.

Court.—Was he a man of the watch?—No:—one of the society.

Mr. McNally.—Who instituted that society?—I acquainted Burke I had made up my ten.

Were you not the root from which it sprung?—I made up my ten.

Who made the proposal for the rescue?—I did.

Were you armed as well as the rest?—I was.

With what?—Pistols.

How many?—Four.

How many ball cartridges had you at that time?—Not one.

Were there any shots fired that night?—

There was a pistol fired.

Who fired it?

Witness.—Am I to answer.

Court.—You are not bound to criminate yourself.

Mr. McNally.—Do you know who fired the pistol?—I do.

Do you choose to answer?—If your lordships think I am bound to criminate myself, I will answer.

Court.—You are not bound to answer to criminate yourself.

Mr. McNally.—Was the prisoner taken out of the police-house that night?—I did not see him that night, but I heard he was taken out.

When you heard the shot, you scampered off?—I did not scamper off.

Why did you leave the place?—Because I was cut in the hand.

Who generally acted as president of the Philanthropic and Telegraphic Societies?—Sometimes one and sometimes another.

Did you know a man of the name of Lawler there?—I believe I did.

Who was treasurer?—I was to one division.

On your oath was not the Philanthropic Society instituted originally for the purpose of reading, and were there not subscriptions for the purpose of buying a library?—It was to act as a Philanthropic Society, that was the name they put on it, as lovers of mankind.

Were they to murder one part of their fellow subjects?—They were all ready to do what the Telegraphic would do.

Was not the Philanthropic Society dissolved in consequence of a sanguinary proposal made by a person?—The Philanthropics were to meet at Nowlan's on the 23rd of August, the same day the Defendants were to meet in Cork-street.

You were a member of both societies— which were you to meet that day?—I went to Dry.

You went to the Defendants?—After I went there, Dry, Coffey and Kennedy went with me to Nowlan's.

Did you not leave the Philanthropic society because they would not do an injury?—No.

Was not that society instituted for the pur-

pose of improvement?—Burke and Le Blanc proposed reading, writing, and learning French, which ever they chose, and they subscribed to buy paper—But it was a cloak, for if any one came in, they could do nothing to them, as they were only learning to read and write.

Court.—They were to learn French?—They were.

Was it through Le Blanc?—He was to have taught it.

Mr. McNally.—You were treasurer to this society?—Yes: to the Philanthropics; one part of it.

Were you ever examined as a witness in a court of justice before the trial of Weldon?—No.

Never in England?—No, sir.

Was there ever a charge exhibited against you in England?—No.

Do you remember the transaction of the Dog and Duck?—There is not a man in England, who would not give me a good character as to that.

Were you ever charged with stealing a watch?—Never.

With stealing any thing?—But by Robinson.

Did Gallagher throw out any imputation as to integrity?—I do not recollect that he did.

Did you never hear, that he made any charge upon you?—Not to my knowledge.

Did neither he, nor his wife?—They did not: after I left him, he gave me a great quantity of goods, and Mrs. Gallagher said it was better to keep a trotting-horse than a gelder, he used so much coals and candles.

Was there any charge of cruelty exhibited against you in that family?—I never did any act of cruelty.

Was there no charge made against you?—No. If I did, I do not think he would give me a stroke of work.

Were you never charged with putting out an old woman's eye?—There was a small bottle of eye water, and it was said there was spirit of turpentine put into it. I was innocent of the charge.

You have said the prisoner was not present at Plunket-street?—I did.

What part of Stoneybatter, was the meeting in?—The corner of Arbour-hill.

Is it not at this side of the may-pole?—I do not know where the pole is.

There was an oath proposed to a person unknown, did you never see him after?—Never to my knowledge.

Did you before?—Never.

Did you ever inquire his name?—No.

Had you seen Leary that evening before?—Not to my knowledge.

Did you see him that evening after?—In the course of the week after.

But after the meeting broke up did you see him?—No.

He was a little in liquor?—Yes.

You were near the door; how near was he to you?—I do not know whether he was in the room at the time the oath was put.

And you do not know whether he heard the oath put?—No.

Nor whether he saw the signs you mentioned. Will you swear he was in the room at the moment the oath was taken?—No.

You did not hear the oath?—No.

How came it that you heard what Hart said, and did not hear the oath?—There were two windows in the room, and some got into the windows to prevent people from looking in, and some got round him and the stranger.

You were armed?—Yes.

Where did you carry your arms?—My sword was under my coat, and pistols were in my pocket. I was desired to bring them there.

They were concealed?—They were.

Did you take them out?—I opened my coat to show them.

Did every one in the room see the arms?—Hart did, and several saw the arms, because I opened my coat and showed them.

Was there any person armed but you?—They said they were not.

You believe what they said?—I do.

There was a man there armed with a fiddle?—There was a fiddle playing in the house; I think it was up stairs.

Not in the room where you were?—No.

Where was the house broke open that you spoke of?—On one side of Blackhorse-lane.

Was that matter ever made public?—Not as I saw.

No reward by the owner of it?—Not as I saw.

Did you ever make any inquiry about it, or the name of the person whose house it was?—No I did not inquire. The day Leary and I were out, he showed me a house at the right hand, where they had been. There was a gate opposite to us, and they went over that gate to the house.

You did not mention a word of this upon your direct examination?—I was not asked as to that.

You were sworn to tell the whole truth?—I told nothing else.

When you appeared upon the former trial, did you say a word about this house? Did you, or did you not?—I did not, but I know it.

Did you say any thing upon the last trial, any thing of what you have stated, when you mentioned that Burke was expelled from the college?—I said, I belonged to the society.

But did you say any thing as to Burke's proceedings?—No, I was not asked.

Do you recollect any thing upon the last trial, respecting his sacred majesty?

Witness.—How, as to Weldon?

No—but respecting the king?—I do: Weldon told me when I took the test, that if the king's head was off to-morrow, there was an end of our allegiance.

Did you not say, there was a time you thought of killing the king?—At the time the oath was put.

How often have you tendered the oath yourself?

Witness.—What oath?

Have you not been in the habit of administering oaths?—At the times the philanthropic met in High-street, there was some little boys carrying about the books. I swore them not to divulge the secrets of the society, nor withdraw themselves from it.

Were they members of it?—They were.

Did you ever administer an oath, not to give evidence against any of the society?—Burk swore the ten, but I do not remember what the oath was.

Court.—Did you swear those little boys?—I did.

Mr. M^cNally.—Do you recollect swearing one of these boys with a pistol to his breast?

[The witness did not answer.]

Have you sworn against any of these little boys?—I do not recollect that I did.

Will you swear you did not?—I cannot swear that.

You can swear the facts without an intention of remembering what you swear to.

[Witness did not answer this question.]

But you do not remember, whether you have sworn against these little boys or not?—I cannot.

I ask you this, have you not sworn a great deal, that you do not remember?—I swore a great deal at the Philanthropic society.

Court.—Do you mean what you swore here, or your information before the magistrate?—No; but what I swore at the philanthropic society.

Mr. M^cNally.—Have you not sworn a great deal before the magistrate in your information, that you do not remember this day?—I do not think I ever swore Brady, or Kennedy, or Flood, or Coffey to that.

You gave informations before a magistrate?—I did.

You swore to them: Now, do you remember, as you sit upon the table, every thing you have sworn in those informations against Leary?—No.

Or what you have sworn against any of them?—Yes, I do recollect.

Do you remember the name of every person you swore against?—I do.

Now mention the names of the little boys to whom you administered oaths?—I cannot.

Recollect the names of the little boys you swore?—There is one lives in Castle-street; there was a good many, and I did not know their names at that time.

Did you ever swear a Philanthropic, a Telegraphic, or a Defender, never to give evidence against any member?—At the Telegraphic society, Burke and a great many more were present; one of the men wanted to swear the members present, and went down and brought up a book: two or three were sworn, and he desired me to take up the book and

swear, but as I had it in my hand, they desired me to stop, for they would not admit the oath to go round.

Do you recollect the trial of Jackson* in this country?—I do.

You recollect a particular witness of the name of Cockayne† upon that trial?—I do.

I ask you on your oath, do you know of any design against the life of Cockayne?—There was Le Blanc, the Frenchman, the night before Jackson's prosecution, and a man who lived in Capel-street, belonging to the Philanthropic, knocked up against my window. My wife got up, and asked, who was there? They desired me to put on my clothes, and if I had any weapons, to bring them out. I did so. They told me we should stop Cockayne from appearing against Jackson. We went to a house at Stephen's-green, in the way leading to Leeson-street, where he said Mrs. Jackson lived—he desired us to wait till he came back. He went in, and when he returned, said, Cockayne had been there, but was gone. He then went for Waller, and brought him. We were walking up and down the street better than two hours, waiting for Cockayne.

Court.—What was the name of the other man?—I do not recollect; he lived in Capel-street. We got a glass of punch, before we went to the green.

Who went into the house?—Le Blanc. We went afterwards to Henry-street, to a house which Le Blanc pointed out, where he said Cockayne lodged up stairs, and said he would get in over a little glass case: he desired us to walk up and down the street, till he went for Waller. He and Waller returned. After he walked backward and forward for some time, and seeing no light up stairs, he thought Cockayne had not come there. We were for two hours and a half. Le Blanc said, if he could see him, he would take him out of the way, to prevent his appearing. But if he was killed, and the Court should know it, the informations he had given could be read; but if we kept him, and he did not appear, Jackson would be acquitted.

You were present, and were one of that party which went first for the purpose of assassinating the man, and afterwards determined it would be better to keep him confined?—I do not say we went for that purpose.

You were one of the party?—There were four of us.

Mention their names?—The man who lives in Capel-street, the left hand side, he is a coach-maker, (Le Blanc) and Waller, who works at Jackson's foundery in Church-street, and myself.

Mr. Prime Serjeant.—Whereabouts in

* See it, *anté*, Vol. 25, p. 783.

† See his evidence on the trial of Jackson, *anté*, Vol. 25, p. 815, and his evidence on the trial of William Stone, *anté*, Vol. 25, p. 1282.

Capel-street does this man live?—He lodged in Capel-street with his mother, on the left side, in a gate-way.

What is his mother's name?—I do not know.

What part of Capel-street is it in? is it between Essex-bridge, and Mary's-abbey, or near where the lottery is drawn?—I cannot say.

You know where the lottery is drawn?—Yes; it is this side of the lottery.

Where did Le Blanc live?—In Golden-lane.

He was an embroiderer?—Yes.

Court.—You mentioned that at the meeting in Stoneybatter, Hart said aloud, the object was to get arms to assist the French?—Yes.

Was Leary present at that time, or not?—I cannot say.

One of the Jury.—You say, that Hart desired such as had not arms, to go home and get arms. Therefore I conceive, you were the only person armed, and the others went home for the purpose of getting arms?—I was the only person armed, that I know of. Hart desired them to go for arms, and not finding them return, he desired those who remained, to put their hands upon the table.

How many remained?—About fourteen.

How many went away?—At the time the young man was sworn, there were twenty in the room.

Then there were but six who went for arms?—When Hart desired those who remained to lay their hands on the table, I beckoned to Walsh, and he came out, but said, he had a naggin of punch to pay for. I went home and was afterwards informed that they were out.

Was the prisoner at Stoneybatter that night?—He was there.

Was he present at the time, the oath was sworn upon the table?—Not that I know of.

Was the prisoner ever sworn as a Defender?—Not as I know of, but whenever we met in the streets, he used to make signs, and shake hands as Defenders do.

But you never heard him sworn?—Never.

Mr. M'Nally.—My lords, I omitted to examine the witness as to the papers: upon the former trial, his evidence went to show they were found upon Kennedy, but nothing more.

Court.—Examine him.

Mr. M'Nally.—How often have you seen these papers before?—Very often.

Can you take upon you to swear who wrote these papers?—To the best of my belief it was Hanlon.

Did you ever see Hanlon write?—No.

Can you swear whose writing they are from having seen any person write?—No.

Is there any private mark upon these papers?—I would know them any where.

Is that an answer?—I described them to

Alderman James, on account of their being much tumbled.

I ask you, have you any private mark upon these papers?—No.

Have you ever seen them in the possession of any other?—In the hands of Coffey.

Did any one else see them?—George Lewis.

Will you swear this is the identical paper, which was in the hands of Weldon, which you saw in the hands of Kennedy, and in the hands of Coffey?—The very paper.

From what mark can you say that, and that it is not a paper wrote by the same person?—I took particular notice, at the time Weldon swore me of the hand the papers were wrote in, and that they were damaged.

If the same man who wrote these papers, wrote duplicates, and that they were damaged, would you swear to them?—I believe these are the papers.

Mr. *Attorney General*.—Upon what occasion did you see the papers in the hands of Coffey?—Sunday 23rd of August, when we were at Dry's in Cork-street, Coffey swore George Lewis upon them, and Kennedy put them in his breeches fob.

Alderman James sworn.—Examined by Mr. *Saurin*.

Do you recollect having received information of any papers being in the custody of any person?—I do.

From what person?—From the witness who is just gone off the table.

Of what papers?—He told me of the Defendants oath? that I would find it——

Mr. *M^cNally*.—My lords, I object to this. If the magistrate took down the information, the writing should be produced——

Witness.—I had written a memorandum of it, but do not know what I did with it. I gave a copy of it to Mr. Carleton, and gave him directions to search Kennedy's fob for a particular paper.

Mr. *Saurin*.—On what day were those informations given?—I believe on the 27th or 28th of August last.

Did you ever issue a warrant to apprehend Lawler himself?—No.

Do you know any thing of his being apprehended?—He came on Saturday, 29th of August, for I was particular in taking a memorandum of that, and gave me information of several Defendants.

Do you know the circumstances of Lawler's being apprehended?—I do.

What were they?—He came to me on Saturday evening and asked my advice or opinion——

Court.—This private conversation is not evidence.

Mr. *Solicitor General*.—My lords; where it is necessary to show that the witness came in voluntarily——

Court.—That appears already from the testimony of the witness himself.

Where was it that Lawler was apprehended —I believe at Crumlin, I was so fatigued myself after the severe duty that week, that I sent to Messrs. Godfrey and Atkinson to arrest the people assembled at Crumlin.

Oliver Carleton, esq. sworn.—Examined by Mr. *Kells*.

Did you receive any directions from alderman James, with respect to Kennedy?

Mr. *M^cNally*.—My lords, I submit that no evidence can be given with regard to Kennedy, who is not upon his trial.

Mr. Justice *Chamberlain*.—Recollect the tendency of this examination. The witness gave an account of these papers, that he saw Coffey swear Lewis to these papers, and that Kennedy took them up, and put them into his fob. Surely if it appears they were found there, it will be some evidence of the identity of these papers, to go to the jury.

Mr. *M^cNally*.—My lords, there is no evidence that the prisoner was sworn upon these papers.

Mr. *Attorney General*.—The only object of Mr. Carleton's testimony is to let in these papers to be read. What effect they may have is another question.

Mr. *Kells*.—Where did you find these papers?—In the fob of Kennedy's breeches.

How came you to search there?—By the particular directions of alderman James.

These are the papers?—They are.

John Atkinson esq. sworn.—Examined by Mr. *Ruston*.

Did you hold any office in this city?—Yes, sir, constable of the south division.

Did you get any directions in August last to apprehend any person?—I did.

Did you execute those orders?—I did.

Whom did you apprehend, and where?—I went to Crumlin, and apprehended five people, Lawler was one of them.

You took him by the directions of alderman James?—Yes.

Court.—Was it so far as Crumlin?—It was near it.

Cross-examined by Mr. *M^cNally*.

Crumlin is in the county of Dublin?—I believe so.

William Finnegan sworn.—Examined by Mr. *Solicitor General*.

Where did you live in August last?—In a place called the Black-quarry-road, in the neighbourhood of Stoneybatter: near hand to it.

There is a road intervening between your house and Blackhorse-lane?—There is a lane, but it does not go through. I am nearer Glassnevin than Blackhorse-lane.

Was your house ever robbed?—It was.

About what time?—I do not know: it might be in August, the beginning of the month.

There were some arms taken out?—There was.

Have you a bell in your house?—I have.

Mention what happened at the time of the robbery?—It was on Sunday night; that I am certain of, though the witness said it was Monday or Tuesday. The first thing that alarmed me was throwing stones at a window; I got out of bed: they threw so hard against the window, I was afraid of opening it. They then broke the panel of the door, and I desired the woman to ring the bell.

Where is the bell situated?—In the yard, there is a rope through the house, and the woman rung it from within.

Were there arms taken?—A brass barrelled blunderbuss, and a fuses, and a couple of pistols.

What is become of your nephew who was in the house that night?—I do not know: he made examinations of that: I saw him swear the examinations.

He swore to the arms?—I do not know, I was not present, when the examinations were drawn.

The arms were produced to him?—No, they were produced to me.

Did you hear, during the time of the robbery, any person complaining of the ringing of the bell?—When I went out, the door being broken—

Mr. *M^cNally*.—I object to this as illegal evidence.

Mr. *Solicitor General*.—Did you hear any conversation going on, while the robbery was committing?—Not while the robbery was going on, I did not.

Did you hear the persons say any thing?—One of the persons asked me, why I rung the bell; I said the reason was, to prevent myself from being robbed.

Cross-examined by Mr. *M^cNally*.

You say it was a woman was ringing the bell.—It was.

Had she lived with you any time?—She had.

Who else was in the house?—A little boy, and my nephew.

Where was the boy?—In bed.

Where was the nephew?—He was up, and threw the blunderbuss out of the window and it was broke, which displeased them.

The blunderbuss that was broke was yours?—It was.

Then the door was not broke open by a blunderbuss?—No, but by the axle-tree of a cart.

Who was in the room with the woman who rung the bell?—She was in the kitchen.

Was your nephew ill-treated that night by any person?—No.

His heels were not knocked from under him?—No.

He never rung the bell that night?—No, he did not.

What night was this robbery?—Eleven o'clock on Sunday night.

[The papers were then offered to be read.]

Mr. *M^cNally*.—My lords, these papers are not evidence to go to the jury. They stand in a very different situation from what they did when they were read upon the former trial, or I would not make the objection, because I consider myself bound to submit to every rule laid down by this Court. It does not appear that those papers were ever in the possession of the prisoner, that they were ever shown to him, or ever read in his hearing. It does not appear, that these papers and the prisoner were, in any one instance, ever together. I conceive, that the rule of evidence with respect to papers is this; if the paper be found in the possession of a man, it becomes evidence to go to the jury to consider for what purpose he had it in his possession. Or, if the paper be proved to be in the hand-writing of the prisoner, then, after proof of that, it may be read in evidence against him. But, if you recur to the evidence of Lawler, he has not presumed to say, that these papers were in the hand-writing of Leary. He saw the prisoner at Stony-batter; there was a paper laid upon a book, and something said, which he does not know, but it does not appear that either of these was the paper laid upon the book. Therefore, without going into the argument at large, I submit these papers ought not to be read. If it did appear that these papers were at the meeting at Stony-batter, the objection might be weakened. But there is no evidence of that, nor that they were read, so that the prisoner might know their contents. And no papers are ever read against a prisoner, unless there be some evidence that he knew their contents and assented to them.

Mr. *Prime Serjeant*.—My lords, I conceive that these papers ought to be read upon two grounds. The principle upon which you have already determined one or two points of evidence goes directly to determine the admissibility of these papers, independent of the ground upon which they were originally offered. The principle upon which the general acts of a body are admissible against an individual of that body applies to these papers. The witness says he was sworn upon these papers. The signs were then communicated to him; and upon a meeting between him and the prisoner, there was a communication between them of one or more signs, particularly the sign of pressing the thumb upon the back of the hand. The ground upon which these papers were offered, is, as explanatory of what was said by Hart, acquiesced in by the prisoner, and acted upon that very night. The next ground upon which I conceive it to be admissible, even if the general ground were out of the case, is this. These papers were brought forward in support of the consistency of the witness, Lawler; to show that he had at different times made the same declarations—that he pointed out these papers as being in

the possession of Kennedy; and the same principle which induced the Court to let us into evidence of the place where the papers were found, calls upon the Court to look at the papers themselves.

Mr. Attorney General.—My lords, these papers were produced at a meeting of Defenders. Dry, Coffey, and Kennedy met at Cork-street. Kennedy produced the papers, gave them to Coffey, who swore Lewis, and Kennedy put them up. This goes to show the system and design among them, and—

Mr. Justice Chamberlain.—I am of opinion, this is evidence to go to the jury, in the point of view mentioned, namely, as evidence of the intentions, schemes, and designs of the persons associated under the name of Defenders; and if we stop this evidence, it would interrupt the train of such discovery. It cannot be denied, that there is evidence to go to the jury of the proceedings of Defenders. The first meeting was in Barrack-street where an oath was administered to the witness, and certain private signals communicated to him to be introduced by:—the prisoner was acquainted with them, and communicated them to the witness; therefore the papers must be material to develop the real design of these persons. It is of the essence of this charge, that the jury should be convinced of what the schemes of the Defenders were, and there is nothing more proper to show that, than these papers, because the jury may infer that every man associated must have been privy to their designs, provided they think the papers are the same, and of that they will be reminded hereafter.

[The papers were then read. See them in the indictment.]

Mr. McNally now addressed the Court and Jury, as counsel on the part of the prisoner; and commenced the defence of his client by regretting the great disadvantages under which the unfortunate man necessarily laboured, from being deprived of that great aid which all men derive, who have the good fortune of being supported by the extraordinary and brilliant abilities of his friend *Mr. Curran*, assigned with him, as counsel for the prisoner; but who, in consequence of a particular event, was precluded from appearing in his professional character, on the present most serious and interesting occasion.

But though standing alone, he said he would rouse his mind from depression; though weak and fatigued, yet he felt consolation from the cheering recollection, that the presiding judges, before whom he pleaded for the life of the prisoner, were not less eminent for their constitutional principles and legal knowledge, than distinguished and revered for their patience and humanity. From the jury also, he received comfort. Some of them were personally and intimately known to him—with the characters of all he was acquainted—and he was convinced that

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in addressing them, he submitted his thoughts to fellow citizens, from whose wisdom and good nature he had to expect every favour and indulgence; and from whose verdict, the prisoner had to expect such a decision, as would be consistent with minds equal to the arduous task of discriminating between right and wrong, between truth and imposition, between affected candour and hypocrisy; and of adducing from the evidence before them, such a conclusion as would fully satisfy their own consciences, and be entitled to the approbation of the public, for whom they were trustees.

He here adverted to the statement which had been made, on the part of the crown, by the attorney-general, on opening the case; which he observed set forth a number of facts that did not afterwards appear in evidence, and which, of course, the jury were bound to expunge from their recollection, when they came to contemplate upon the verdict which they should pronounce, and which, by the rules of justice, must result solely from testimony given in proof by the witnesses, and credited by the jury. He hoped it would not be understood, that in making this observation, it was his intent to insinuate in the slightest manner, any imputation that could affect the known candor of the first law officer of the crown—No, on the contrary, he considered himself called upon, having this opportunity, publicly to declare, that humanity to the prisoner, as well as zeal to the crown, had on every prosecution as well as the present, marked that gentleman's professional conduct, and bore honourable testimony to the benignity of his mind.

There were, he said, some principal objects to which he would presume to solicit the attention of the jury. These objects were;—First, the oath they had taken; secondly, the pre-eminence of the great and sacred character who prosecuted; third, the approver examined as a witness; and fourth, the nature of the evidence, which that approver had divulged in support of the indictment.

Here *Mr. McNally* said that, in respect to the last object he had to submit to the jury, the nature of the evidence, he felt the highest satisfaction and great relief from having perceived that several of the jurors had, during the course of the trial, been sedulously employed in taking notes of what had past, by which they would be the better able to correct any errors that misconception on his part might lead them into, and he hoped they would rectify his mistakes, when he came to the statement of evidence, as it was certainly not his intention wilfully to misrepresent a single iota of the evidence, or to make a single observation not founded in fact.

He then proceeded to the first point he had proposed to submit to the jurors' consideration, and it called for their most serious attention, he meant the nature of that oath which they had taken when called upon as

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trials of the prisoner. They would recollect they had sworn that "they would well and truly try and true deliverance make between their sovereign lord the king, and the prisoner at the bar, and a true verdict give according to the evidence"—they would recollect that on swearing thus, they had appealed to the Almighty God to punish them if they did not do impartial justice. To find according to the evidence was the obligation of the oath. Now what does finding according to the evidence import?—It imports no less than this, that a jury should not find a verdict of guilty on any proof that was not convincing, clear and strong, as holy writ; that was not free from imputation and divested of doubt. That evidence on which a man's life depended, on which a man's life might be the forfeit, should be unclouded, unshadowed by uncertainty and clear as the sun at mid-day: for evidence is that which puts the matter in issue on the ground of certainty; where there is a doubt in a criminal case, there cannot be a conclusion of guilt against a prisoner, but there must be a verdict of acquittal. Unless every man on the jury is convinced of the prisoner's guilt, they are bound by their oaths, they are compelled by their consciences, they are called upon by the rigid principles of justice, they are directed by the imperative voice of mercy to acquit.—It was for this reason that by the old law prisoners accused of capital crimes were not allowed to exculpate themselves by the testimony of witnesses; the rule however was weak and dangerous, though the motive assigned to it was merciful and benign. No man, says lord Coke, should be convicted but on clear and indubitable evidence, and that is the reason, continues his lordship, that prisoners were not allowed witnesses by the common law. Here Mr. M'Nally entered into the danger of drawing conclusions from inferences or implications, and cautioned the jury to form their verdict solely from facts given in proof.

Mr. M'Nally now gave a short statement of the indictment against the prisoner. By this indictment, he observed, the prisoner stands charged with two distinct species of high treason, the most enormous offence which the law recognizes, or of which the subject can be guilty. The first charge is that "the prisoner at the bar with other false traitors did associate themselves for the purpose of aiding and assisting the persons exercising the powers of government in France, &c., waging war against the king, and did compass and imagine the death of our sovereign lord the king, with an intent our lord the king to kill and put to death." The second charge against the prisoner is, that "he was adherent to the king's enemies giving them aid and comfort," and both these offences were declared to be high treason by statute the 25th of Edward 3rd, and that statute expressly required that the party accused of high trea-

son, be thereof, upon sufficient proof attained of some overt or open act by men of his own condition—that is by a jury.

As to the first of these charges it did not appear to him, that any overt act of compassing and imagining the king's death had been given in evidence; and therefore he would not now urge any argument upon the law on that species of treason, or recapitulate those which on a former occasion he had submitted to the opinion of the Court. On the occasion he alluded to, his objections had been overruled by the Court, and certain it was, the judgment of the Court was supported by the highest authorities: authorities to which he must submit, though not convinced: they merited every respect from him, and it was his duty to bow with reverence to their judgment. Here he again urged that the law respecting the first charge in the indictment need not be stated to the jury; for that though the indictment spread its terrors over six skins of parchment, exhibiting no less than sixteen specific overt acts of treason, yet not one of those overt acts applied to the first charge, and he believed the learned judges who presided, would be of opinion, that only two overt acts had relation to the second, for which reason, he would take into contemplation only the second count, and those overt acts which appeared to support it.

As to the law on the second count or charge in the indictment, it struck him, that the species of treason set forth therein, contained two branches. First, "being adherent to the king's enemies in his realm, and giving them aid and comfort therein." Secondly, "being adherent to the king's enemies, and giving them aid and comfort elsewhere," that is, out of the realm. The offence charged upon the prisoner, and on which the overt acts were grounded, was clearly the first branch of the second species of treason, "being adherent to the king's enemies within the realm," but he submitted to the Court that there was no evidence to show an adherence to the king's enemies *within* the realm: for there was no proof before the jury, that the king had enemies within the realm. Perhaps it might be asked, are not rebels the king's enemies? Are not traitors foes to their sovereign?—The answer is, that in contemplation of law, persons of such description are not the king's enemies. No man owing allegiance to the crown, whether natural allegiance (which included all his majesty's subjects) or local allegiance (which included alien residents) were in contemplation of law the king's enemies; the enemies meant by the statute of Edward 3rd, were to be understood the subjects of foreign powers, with whom the nation is at open war, and there did not appear a scintilla of evidence in the course of the trial to show that the prisoner at the bar had adhered to, or given aid, or had abetted such foreigners, or held the least connexion, or the slightest intercourse with

them within or without the realm. The charge, he observed, was novel, though the law which provided against it was ancient. He doubted if there was a precedent to be found in the books more recent than the reign of queen Elizabeth. He had seen one in the state trials of that reign, but it was so loose and faulty as not to be an authority. Adhering to the king's enemies without the realm was a more frequent offence, but no such offence was set forth in the indictment, nor any overt act of such an offence. The overt acts of this species of treason as described by the books, were, writing and sending letters of intelligence to the enemy, supplying them with money, or supplying them with provisions, or warlike stores, or other articles of a similar nature, not one of which overt acts appeared in the indictment. If, however, the Court were of opinion, that the second count was well laid, he submitted that the only facts in proof that applied to it, were those which tended to establish the fifth and eighth overt acts, and that he would observe upon those facts and the credit they deserved, when he came to speak on the evidence given by Lawler the approver.

Mr. McNally now called the attention of the jury to the second object—the prosecutor, Who was the prosecutor? The prosecutor was the king. A character sacred, pre-eminent, and paramount to all others known to the constitution. A character to whom, politically speaking, the law attributed immortality and perfection—a character so elevated, that a great constitutional writer, after mentioning his prerogatives and his revenues, ascribes to him so great and so transcendent a nature, that he adds, the people are led to pay him the most awful respect, and to look up to him as superior to other beings. But that respect and reverence due to the sovereign, must not interfere with justice; must not influence a jury, bound by their oaths to determine by the intrinsic weight of evidence, not by influence arising from extrinsic causes. The strongest proof a jury can give of loyalty and affection to their sovereign is, to administer impartial justice to his subjects. The jury would keep in their minds that his majesty did not come forward, on the present occasion, to prosecute for an offence against a private individual; but for an offence the most heinous that the law recognized; for no less an offence than an intent to destroy his own sacred life, by bringing war and desolation on the land. The horror that arose from the contemplation of such a crime, nay from the intimation of it, must strike a deep and sensible impression into the mind of every man—but he conjured the jury again to recollect the nature of the oath they had taken; to judge solely from the evidence, and that to determine fairly they must divest their hearts of all passion, and their minds of all bias; they should neither act from feelings nor from influence; and that without a dereliction of

both, however worthy the motives might be which guided them, they could not decide conscientiously the issue they were sworn to try, and truly to determine between the king and the prisoner.

Look now, said he, on the witness—turn your eyes on William Lawler the approver: by his own confession, he stands before you a principal actor in the perpetration of a catalogue of crimes the most atrocious and shocking. Contemplate for a moment the transgressions of this miscreant (in which he would implicate the prisoner) and consider his conduct seriously before you give credit to his evidence. In what character does he come forward? In that of an approver, that is a culprit, who being charged with a crime or crimes, for the purpose of saving his own life accuses another. It cannot be very material to a man of such a description whether he convicts the innocent or the guilty. A wretch who by his own confession attempted murder against the law, would have little compunction in committing murder under the sanction of the law, when safety to his own life was the reward. He said under the sanction of the law, because an accomplice is clearly a competent witness, whether he be indicted or not, and for this plain reason, that if the evidence of such a man was entirely rejected, many crimes of the most enormous nature might be perpetrated with impunity. But there existed a general rule of law in such cases, to which the court should always paid a tenacious regard, and which must strongly impress the jury, when stated to them by the learned judges on the bench it was this—that unless some fair and unpolluted evidence was produced, corroborating and communicating a verisimilitude to the testimony of the accomplice, that testimony ought to have no weight with the jury. This was a rule of benignity, and he would venture to assert that the law reporters could produce but one exception to it; a solitary case reported by Mr. Leach, of a trial before judge Buller, in England, and that exception did not forcibly apply here, for in that case, the witness on whose single testimony the jury founded a verdict of guilty, was not impeached for the commission of any offence, saving that individual one in which he had been a *particeps criminis*; he did not appear pied with an accumulation of black offences; attempts at murder and conspiracies for assassination. The jury would not forget Lawler's confession of faith. No, they would remember that though he swore on the holy evangelists that he at present believed in the existence of a God, he yet had acknowledged the impious fact that his faith in the Trinity had been shaken. That though he had been heretofore instructed in the Protestant religion, yet he acknowledged he had been seduced from the principles of christianity to the sceptical opinions of deism. But impiety of a much grosser nature than deism would be proved

upon him by witnesses of credit. It would be proved that Mr. Lawler had not only openly and repeatedly declared his disbelief in the Trinity, but in the existence of any of its members: that he had denied the divinity of each of the three divine persons; that his creed admitted of no deity, of no translation of the soul, but recognized only one melancholy opinion, that "death is eternal sleep;" that man, like the inanimate tree, lies where he falls, sinking to all eternity into his native earth, incapable of renovation or ascension into future life. Such was the diabolical religion, at least such had been the infamous professions of Mr. Lawler the atheist and approver.—Such was the infernal instigation under which this unbelieving witness had acted; whose call was not like that of St. Paul, from infidelity to the true faith, but who, like Julian the apostate renounced the precepts of the true faith to become an infidel and a persecutor.—To him may be well applied an epigram made on a similar character; on a wretch who having long professed and disseminated the precepts of atheism, received the sacrament, in order to qualify for a place—

"Who now can think recanting odd,
 "To shun a present evil,
 "That wretch who oft' denied his God,
 "Has now denied the Devil."

Such is the delineation of Mr. Lawler's religious theory; let us now take a slight view of his moral practice. Out of his own mouth the jury should judge of his morality—mark his confessions in the course of his cross-examination. He had been discharged, or he had ran away, for he did not positively say which, from his first master, Mr. Robinson, on a suspicion of theft. He had confessed having taken an oath of fidelity when he enlisted, and having premeditatedly broken that oath when he deserted; of having solemnly sworn not to prosecute the unhappy deluded youths with whom he associated, and whom he had seduced into clubs, and of having perjured himself by the breach of that obligation. It was true he had not acknowledged an intent to commit murder, for when asked, who fired the pistol into the watch-house, in the attempt to rescue, he refused to answer that question, well knowing the consequence. But, was not that refusal a tacit confession of the crime? Was it his innocence of the charge, or his prudence to avoid punishment for the crime, prevented an answer? The jury were the judges of that, and the jury would apply this refusal to his credit. On the question of assassination, he was more candid, for with audacity and composure, he had coolly and deliberately stated having been one of four, who had lain in wait to put Cockayne to death. So that this witness, on the credit of whose testimony, the life of the prisoner at the bar depended, stood himself before the jury, self-arraigned, and pleading guilty to charges

of one intended murder, two perpetrated perjuries, and a premeditated assassination! Could his credit support such a weight of accumulated guilt? The act of discharging a pistol into the watch-house, might, no doubt, by the ingenuity of argument, be palliated and softened down to manslaughter, in case a life had been lost—It might be construed into an act of passion without malice prepense; but the intended assassination of Cockayne had none of these qualities, the intention there was blackened with the most implacable malignity, and had the fact been accomplished, would have amounted to murder of the most aggravated enormity. Mark his coolness, recollect his deliberation, previous to the commencement of the diabolical deed—He was awake in the night, and, in the night he arose and marched forth armed, for the purpose of assassination! Would the jury credit such a witness as this? A miscreant leproised with crimes, surrounded with fears for his own personal safety?—A miscreant with the gallows in his front, the pillory in his rear, and his pardon suspended over his head, on condition that he should support, by his testimony in court, the information he had sworn to before a magistrate.

It may be answered, and indeed it was thrown out on a former occasion, that the jury would give Mr. Lawler credit, because he was consistent. Is not every liar that fabricates a scheme of villany for reward, or for impunity, consistent? Is it to be presumed, that a man of Mr. Lawler's docility and cunning, would not corroborate, on the table, in the face of the Court, what he had previously promulged and sworn before alderman James? Every man knows the melancholy story of the unfortunate youths, who suffered an ignominious death in London,* from the perjured evidence of Salmon and Gahagan. These wretches swore away the lives of their fellow creatures, to acquire rewards given by statute, on conviction for highway robberies, and there evidence was always consistent: so was the evidence of Titus Oates and his associates, and so would the evidence of conspirators, such as Mr. Lawler, ever be found.

Mr. M'Nally having concluded his description of the approver, proceeded to observe upon such parts of the evidence as, he said, appeared material in the case, if any thing could appear material coming from the mouth of such a man; and as he thought the whole should be narrowed to what had been sworn to have passed at the meeting at Stoneybatter, he would confine himself to the facts respecting that meeting.

It had been sworn by Mr. Lawler, that the prisoner had been there, at a meeting of a society calling themselves Defenders, but it did not appear that he ever attended that

* See the trial of Stephen Macdaniel and others, *anté*, Vol. 19, p. 745.

society a second time, a circumstance which must impress the jury with a belief that if he had been even there, he was disgusted with their proceedings, and dropped their association. He was not, however, answerable as a traitor, even if he had been present at one meeting, and saw and heard what passed, for he only concealed what he had seen or heard, without showing an approbation by a second visit, and to conceal treason except in case of an actual conspiracy to kill the king, was not treason, but only a misprision; a crime of a different species from that for which the prisoner was indicted.

The most serious part of the overt acts he conceived to consist in taking those oaths or obligations, which had been read from the papers found by Mr. Carleton, the peace officer, on the person of Kennedy. But was there any evidence to support that overt act—was there any proof that the prisoner had taken oaths, or either of them? not an iota of proof!—not so much as a reasonable presumption; for there was not proof that he had ever read those papers, or had even heard them read, or was present when any oath of any kind was administered. Neither was it in proof, before the jury, that the papers which lay on the table in the house at Stoneybatter contained an oath or obligation, nor was it pretended, that such paper was one of those which had been admitted to be read in evidence by the Court. A person named Hart, as sworn by the approver, had put his hand upon a paper that lay on the table; but the approver declared he did not hear any thing that had passed on that occasion; so that, for aught he knew, nothing had passed, and if any thing of consequence did pass, or if any thing treasonable was said, it was equally clear that the prisoner had not seen or heard any thing; but it appeared he was in liquor—it appeared he was so situated that he could neither hear what was said nor see what was done.

He then urged that no intimacy had appeared by evidence to have subsisted between the approver and prisoner on any other occasion. He had not been on the party at the watch-house, when the approver was wounded, in attempting to commit murder. He had not been called upon to join the conspirators who premeditated the assassination of Cockayne; in short, it did not appear he had been at any meeting but one at Stoneybatter; and there was no satisfactory evidence before the jury, even from the approver himself, that any treason was agitated at that meeting in the presence or hearing, or by the assent of the prisoner.

Mr. McNally now touched on the difference of the statute law in cases of high treason, in England and Ireland. In England, he observed, the prisoner would not have been put upon his defence, but must have been acquitted on the evidence given for the crown; for there one witness, though perfectly cre-

dible, as well as competent could not affect a prisoner charged with high treason—there the legislature, jealous of crown prosecutions, and tenacious of the subject's safety, had prudently and cautiously provided, that to sanction and support a conviction of high treason, there must be two credible witnesses to one overt act, or one credible witness to one overt act and a second witness to another overt act of the same species of treason. The Irish statute had not adopted a similar provision, and as the parliamentary law of England had no force, and he trusted never would have force, in Ireland, he could not urge the English statute as an authority; though he would venture to state it as containing a principle wise and salutary, and which should have weight with the jury as being derived from the common law, which was the same in both countries. The principle was this, that one man's oath was as good, in point of law, as another's, and therefore in perjury, there must be two witnesses at least, to convict: for the oath of the single person charged was as strong and conclusive evidence of his innocence as the oath of the person charging was of his guilt. This rule applied, with great effect, to cases of high treason, because as every man living within the realm, under the protection of the laws, owed in return for that protection, allegiance to the crown, which he could not transfer or divest himself of, that oath of allegiance balanced in the scale of justice the oath of any single witness. Every man is presumed to have taken the oath of allegiance—the jury must presume that Leary the prisoner had taken that oath, and that oath should not only counterpoise, but preponderate against the oath of Lawler, whose credit was impeached, shaken, nay, sapped and overturned by his own confession of having broke the oath of attestation, which he had solemnly sworn, when he enlisted and promised true faith, allegiance and loyalty, to his majesty.

When the jury took these observations into their consideration, he trusted they would not convict a man upon evidence impeachable and inconclusive; evidence which could only raise a presumption of guilt. If any treason appeared, he submitted, it was but constructive treason—what was construction?—the best lives that England ever boasted, the greatest characters that ever served their country and supported its constitution, had been sacrificed to construction—It was a boundless ocean without limits—should a jury venture on it, they would find themselves without compass, without sail, without rudder, without chart to guide them—they would be tost by the undulation of every wave and sported with by every storm: till striking upon some sunken rock, or drawn into some whirlpool, they and their bark would be dashed to pieces, or foundering sink into a treacherous abyss! It was on certainty a jury should found their verdict,—certainty resulting from the conviction of un-

impeached evidence. Construction was at best a scheme of chance, a wheel from whence the properties, the liberties and lives of the most upright and honourable might by degrees be drawn at the will of the directors, till every man of worth and estimation in the country dropped off as by lottery.

Mr. *M^cNally* concluded by again adverting to the heinousness of the crime charged upon the prisoner, and described to the jury the dreadful sentence and horrid execution which would inevitably succeed a verdict of conviction. It was, he said, the cruel invention of savage and barbarous times; the most severe that stained with blood the black page of the criminal code.—It was the vindictive sentence of irritated and insatiate vengeance, not the punishment of pure and dispassioned justice. It was not confined to death, but extended to torture, mutilating and disfiguring the dignified image of God, after whose form we were taught to believe man was made.—But it went farther than even the destruction of the offending object, it visited the sins of the father upon the innocent children, by tainting and corrupting the current of their blood; by marking them like the devoted offspring of the first murderer, turning them abroad wanderers, outcasts, and vagrants over the face of the earth.

Samuel Galland sworn.—Examined by Mr. *M^cNally*.

Do you know William Lawler, alias Wright?—I know him by the name of Lawler.

From the general character which he bears in life, do you consider him to be a man, who ought to have credit upon his oath, giving evidence in a court of justice?—I do not.

Samuel Galland cross-examined by Mr. *Prime Serjeant*.

Where do you live?—In Crane-lane.

Of what business are you?—I am a grocer but served my time to a hair-dresser.

How long have you lived there?—Since I was two years old. I am near 21 years there.

How long have you been a grocer?—Two years.

Were you ever a member of a society?—I was of a reading society.

What was the name of it?—It had no name, it was so young, before I left it.

What did you read?—The papers of the day:—Chambers's dictionary.

It was not politics you read?—Not at all. In the course of conversation it might; but it was not the principal part.

Was it not the principal motive for introducing those clubs?—Not when I was a member of it.

When was this club established?—Some time after Lawler came from England, he asked me, was there any society in Dublin? I said, No:—He said, there might be some

reading society, and he asked me to become a member, and my brother, and others.

Were you ever a member of any other society?—Never

Was not your brother a member of the Philanthropic?—I believe he was.

Was not he a member of the Telegraphic?—No, I believe not.

You say you are a grocer?—Yes.

You deal in spirits?—No, tea, and sugar only.

Was your brother a member of that society which expired so soon?—He was.

Did you ever hear of such a society as Defenders?—I have heard of them as a body, but not as a society.

Do you not believe such a society exists?—I believe they exist, when men have fallen sacrifices to it.

What do you believe are their designs? Were they not criminal?—I cannot say; I should think they were criminal.

Have the goodness to tell us why you did not continue in the society, as well as your brother?—I had not time, and I deserted it before it was dissolved. They were scrambling about a chairman and secretary and party matters, and there was no knowledge to be acquired, but noise and confusion.

Was Burke a member of that society?—He was.

Can you recollect the names of any others?—Not many. There was myself, my brother, Lawler, an acquaintance of Lawler's, one Strut, in short there was not many, 12 or 14.

Did you know John Le Blanc?—I did.

Was he a member?—No.

How long have you been acquainted with him?—Some time after Lawler came from England. It was through Lawler, I became acquainted with him.

Did you know Leary?—No.

Do you know Dry?—No.

Did you know Weldon?—No; I never saw him until his trial.

Do you know Brady or Kennedy?—No.

Did you know Coffey?—I did know one Coffey.

Did you know Flood?—No.

Clayton?—No.

Lewis?—No.

Hanlon?—No.

Hart?—No.

You knew only Coffey?—That was all, and my acquaintance with him was very slight.

You were summoned upon the last trial?—I was.

Tell how you came to communicate what you know of Lawler?—I told it to Mr. Bates. Who is he?—A hatter in Parliament-street, who told it to the attorney, I believe who summoned me.

Was Bates a member of any of the clubs?—No.

How came you to know that Lawler was to

give evidence?—I did not know, but I mentioned that I knew the man, and what his character was.

You thought Lawler was under a heavy charge, and it was cruel in you to oppress him?—I did not, but said, I was sorry for him. I told Bates again, when he heard that Lawler was turned approver.

You wished Lawler well?—Yes.

And then when Bates told you, that Lawler was turned informer, this man whom you wished well, was such a man as was not to be believed?—Bates sent to me, and I went to him, to Castle-street, where he lives, he asked me, "how long I knew Lawler"—I said, for many years. "What do you know of him?"—I told him all I knew about him, and then I was sent for by Flood.

Who is he?—An attorney; and it is by that I am obliged to tell what I have.

Have you a good many friends that you are anxious for, whom you would not believe upon their oaths?—No.

Have you any other friend, who ought not to be believed upon his oath?—I believe I have.

Mr. *M^r Nally*.—My lords, I beg leave to suggest a question. Whether the witness ever had any conversation with Lawler, respecting his principles of religion?—I had.

Mr. *M^r Nally*.—Tell the jury, what it was.

Witness.—At his first coming from England, I perceived he was a Deist, and denied that Jesus Christ was the Son of God. I was shocked at it.—He said, the only way to become reconciled to it, was to read upon it.—I said, it was a shocking piece of business.—But, said he, I will go farther, for I deny the existence of a God.—Where, said I, do you think your soul will go after you die?—he answered, No where.

Court.—How long did you continue in the society after this?—Not long.

Mr. *Prime Serjeant*.—It was after you were shocked by these irreligious opinions, that you were anxious about him, and went to Bates?—His belief is nothing to me: in his own breast let it lie.

You kept him company after this?—He came to my place, but I never went to him.

William Ebbs sworn.—Examined by Mr. *M^r Nally*.

Where do you live?—In Cathedral-lane.

How long have you known Lawler?—About 12 months.

Where did he reside in that time?—In my house: he took a lodging from me.

Do you know of Lawler's having any thing concealed in your house of a remarkable kind?—Not till after he was apprehended.

Had you occasion to make a search in his apartment?—On my coming home to my breakfast, my wife told me, she saw Mrs. Lawler go into the yard, and conceal something in the dirt-hole; I went out immediately, and found two leather bags,

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containing 60 musket balls. I never had a bad opinion of him till I saw them, and I was then shocked.

If Lawler swore that he had no ammunition or balls, would he swear true?—No, certainly he would not.

Have you ever conversed with Lawler upon the subject of the Deity?—No, I had very little communication with him, though he lodged with me.

You have heard of his character?—I have.

From what you know of the general character of Lawler, is he a man that ought to be believed by a jury, giving evidence in a court of justice in a capital case?—I would not believe him upon his oath.

Were you ever a member of those societies?—Never.

Were you solicited to become a member?—I was.

By whom?—By Lawler.

You did not become a member?—No, I did not choose it: I asked him the intention of it: he would not tell me till I was admitted. He applied to me for a room in my house, for a society to meet in, and I refused. I did not like him after that. His wife gave me a pistol loaded with powder and ball.

You have been summoned on the part of the crown and by the prisoner?—I have five or six times, every day.

Who summoned you to attend Weldon's trial?—The crown, and I was not called upon.

William Ebbs cross-examined by Mr. *Attorney General*

How long did Lawler live in your house?—Twelve months since he took the lodging first.

When did he go to live with you last?—Five or six months before he was taken up.

During that time he followed his business?—He did.

And maintained his family?—He did.

And conducted himself well?—For a time he did.

He was a member of those societies?—I believe so. He told me so.

He was an active member?—I believe so, by his asking me.

You heard his testimony this day, and you were asked, if he had sworn, that he had not balls or powder in his room whether he would have sworn false. But if he did not so swear, but was asked, had he ball cartridges, would you disbelieve him?—There was both powder and ball in the pistol.

Do you know any thing of rescuing a prisoner from the watch-house?—I heard of it, he being cut.

Was not that a long time ago?—It was.

Mr. *Attorney General*.—And if he swore, that a long time ago he had no cartridges, and a long time after, you found balls in the house or the room, would you think you ought to conclude, he had perjured himself?—I need not press you for an answer.

At the time he was arrested, would you, if asked, say, that he was not a man to be believed?—I would, for this reason—

Give me your reason?—I would; he told my wife several things, from which she said he was a dangerous man. He never kept the Sabbath, for which I determined to get him out of my house. When I came down clean for church, I used to see him working.

Are there not many honest men, who work upon Sunday?—There may; but I was asked any reason for not believing the man, and I assign that as one among others.

At that time, you had no other reason?—I had.

Except what your wife told you?—No.

You ground your opinion upon what you heard this day?—Not by any means.

You can have no interest in this business?—No, indeed, for I have lost.

By this man?—No, but by loss of time here.

Then the evidence you give is not founded upon what he has said this day?—No, I had this opinion some months ago.

How long did he work upon the Sabbath from the time he came to lodge with you?—Occasionally.

How long had he remained?—Seven, or eight months.

And why did not you turn him out?—I could not because he paid his rent regularly.

Did he work from the time he came?—Occasionally he did, and I gave him warning; he took the lodgings for a year.

But he did not stay a year?—He did not, but his furniture is there still, and his rooms are locked, what can I do with them?

Did you speak well of this man, within this month?—As to his pay, I might, and keeping good hours.

Did you not speak well of him within these six weeks?—Not to my knowledge.

Upon what occasion, did you say he kept his hours and paid his rent?—I do not recollect. There were many called to my house, but I was not at home.

When did you first tell this, that he was not to be believed on his oath?—I do not recollect that I mentioned it to any one, except sitting in court the former day.

Did you never converse respecting him, after his being arrested?—I do not know that I did.

And yet it should seem very natural that you should converse about it. When did you first hear that he was a witness?—I did not hear it till after Weldon's trial.

Did you never hear of it till then?—I had heard of it, but was not certain of it.

Did you not mention it then?—No, I did not like to mention it, because I thought it rather disrespectful to myself to have had such a man in my house.

Nicholas Clare sworn.—Examined by Mr. *M'Nally*.

Where do you live?—No. 39, Townsend-street.

What business are you?—A tailor.

A master, or journeyman?—A master.

Do you know William Lawler?—I do.

How long?—About fourteen months; the beginning of the winter 1794.

Have you ever had any conversation with him about his principles of religion?—In the winter of 1794, I belonged to the Telegraphic society; I was at it three or four times, and there was a meeting at which they talked of the Age of Reason by Paine, some recommending it, others approving of it. Lawler said, I go farther than he does, for I deny any part of the Trinity, either Father, Son, or Holy Ghost.

How long were you a member of that society?—I quitted it immediately upon seeing there was a fellow of this opinion in it.

On your oath did you quit it upon hearing the opinions divulged by Lawler?—On my oath I did.

From the knowledge you have of his character and opinions, do you consider him a man to be believed upon his oath, giving evidence in a court of justice?—I do not.

Give your reason?—I should think a man, who denied the three persons of the Trinity ought not to be believed upon his oath.

Nicholas Clare cross-examined by Mr. *Saurin*.

You were of that society?—I was.

When did you quit it?—October or November 1794.

Lawler is a much younger man than you?—I do not know; I am about 32 years of age, and I do not know his.

Did you read that book?—No.

Did you read any other?—I did, and intended to make them a present of a dictionary of arts and sciences, I thought it such a society; but when I found he promulged such opinions and being a leading man, I quitted it, and was glad I did not give my books to them.

Was Burke a member?—There was a Mr. Burke.

Was Galland there?—I do not know him.

Had you any other acquaintance with Lawler than what arose from meeting him there?—Never.

Francis Hammon sworn.—Examined by Mr. *M'Nally*.

Do you know the prisoner?—I do.

What is his general character?—From the time I knew him, a very industrious young man; supporting a mother since I knew him in September 1794.

Francis Hammon cross-examined by Mr. *Kells*.

Where do you live?—In Liffey-street.

Where did the prisoner live?—In an apartment under my lodgings.

He lived by shoe-making?—By making shoes, and mending and cobbling.

Where did he sleep?—Underneath where I slept.

Might he not frequent clubs, without your knowing it?—He might.

Are you a member of any?—I am not.

He might have spent his nights out?—He might. I took notice of him as a young man so very industrious, and I used to remark, that he surprised me, by being so long tied to his mother's apron string. He worked at very early hours in the morning; I asked him why he worked early and late: he said, he could not please every body after all.

He might frequent clubs notwithstanding?—He might.

[Here the evidence closed on the part of the prisoner.]

George Cowan sworn.—Examined by Mr. Attorney General.

Do you know Lawler?—I do.

How long?—Four or five years.

Is he a man to be believed upon his oath in a court of justice?—I never heard of an opinion to the contrary till this trial.

Do you recollect his going to you in August last?—I do.

Tell the jury upon what occasion was that?—He came to me on Monday morning, 23rd or 24th of August, and seemed to be a good deal agitated. He came into the parlour; he shut the door of the parlour, and then opened his mind to me.

What intercourse had he with you before that?—After his coming from England, he came to work with me; he staid but a short time, when he went to Gallagher's, South Great George's-street, he worked in his (Gallagher's) house and in his own lodgings. I do not believe he worked for any one else.

What passed when he shut the door?—He told me that he wished to open his mind upon a matter that concerned him very much; that there was a conspiracy against the Protestants of this country, which he wished to make known for my advice, what to do. [Here Mr. Cowan asked, was Lawler within hearing, and being answered in the negative, he proceeded.] He then told me of the societies he had been in. I do not recollect, that he mentioned the London Corresponding Society. He mentioned the others, which he mentioned here. I asked him was he sworn a Defender. He told me he was a sworn Defender, and there told me almost word for word as he has done upon the table the two days he has been examined. Upon my word, he has adhered to what he told me very closely in the two examinations.

Was there any one present?—There was not.

Could any one hear?—There could not.

Why not?—Because there was no person present.

Was the door shut?—It was; he shut it himself.

What advice did he ask? Did he make any proposal?—When he heard the Protes-

tants were to be put to death, that lay very heavy upon his mind (he was a Protestant himself); in order to prevent the mischief, if possible—

Did he speak of any intention he had with regard to himself?—He did not.

Until now you never heard any thing to impeach his character?—Never.

Do you know Ebbs?—I do.

Had you ever any conversation with Ebbs?—I had.

When?—Shortly after Lawler was apprehended.

Upon that occasion, did Ebbs appear to know that Lawler was charged with high treason? or that he was a witness?—He appeared to me to know, that he was charged along with the rest.

How did Ebbs express himself of the man?—He represented him as a very honest, industrious creature; that he would pay his rent the very day it became due; that he and his wife appeared extremely decent. I went up to the room to look for him, before he was taken up.

Ebbs did not impress you with any opinion injurious to Lawler and his family?—No, but the reverse; he told me, he was an honest industrious man, and never was more surprised in his life.

George Cowan cross-examined by Mr. M'Nally.

Ebbs said, he never was more surprised than when Lawler was taken up as a Defender?—He did.

Did he tell you of any thing bad, which he knew of Lawler?—No.

Did he then tell you of what he found in the dirt-hole?—No.

If you had a lodger of whom you had a good opinion, and that he left bags of balls and slugs after him, would you not be surprised?—I must tell you farther. On Friday last I saw Ebbs; he came to me in our hall, of which he is a free brother? he said he wished to have the furniture taken away, as he was afraid his house would be pulled down by the mob. Neither at that time, nor until this moment did I hear him say any thing against the man.

The day of the conversation in the hall was the day you returned yourself a common council-man upon a minority of votes?—It was the day of the election.

That election has been set aside?—It has.

Would you not change an opinion of a lodger, if you found ammunition after him?—I might.

Do you not think Ebbs had a right to change his opinion?—No doubt but he might.

Do you not think he was right?—Certainly.

When you spoke to Ebbs, did you say any thing respecting religion?—I did not.

Then the character which Ebbs gave of Lawler was confined to the points of industry

and payment of rent?—It was. He never mentioned his religion to me.

Do you not think a lodging is as necessary to a rogue as to an honest man?—I believe so.

And therefore it is necessary for a rogue to pay his rent to secure his lodging?—It is.

What Lawler told you was consistent with what he told upon the table?—He has told a little more here.

Nothing less?—No.

If a man laid down a plan, which he intended to support by evidence, would it not occur to him, as the first thing to be consistent?—It might.

Did you never hear of men being hanged upon the consistent evidence of a conspiracy to convict them for the purpose of procuring rewards?—I never did hear of it.

If you were of that malicious disposition, would you not compose a train of lies to support your story?—I do not think it easy to support a train of lies.

But if a man gave information of certain facts before a magistrate, though that were false, would he not endeavour to support it before a jury?—He ought to do it, if they were truths.

When a man swears to a lie in one place, it is his object to make it appear as like it in another?—I cannot say.

Do you not believe that a man, who would swear to one lie in one place, would swear to another in another place?—I should suppose so.

If he told a lie before the magistrate, would he not tell the same lie here?—I think so.

If he contradicted his informations, would he not be liable to an indictment for perjury?—No doubt of it.

If you had a good opinion of the consistency of Lawler, why did you ask was he within hearing?—I'll tell you my reason, because I should be happy to tell every thing with respect to the prisoner, as to Lawler. Lawler's wife came to me and told me that Ebbs wanted his rent; this was after Lawler was apprehended. I desired Mrs. Lawler to send Ebbs to me, and I would satisfy him. The reason I did this was, that Lawler should not understand that any think was done for him in consequence of any prosecution. I gave money to pay Ebbs the rent, and Ebbs was paid the rent, and he continued the furniture ever since.

Then there have been pecuniary services for Lawler's family?—So far as that.

How are you to be re-imbursed?—I could not think of letting him want after the information he gave me.

It was from motives of charity in your own humane breast, that you advanced the money?—I did not say any such thing.

Do you expect to be re-imbursed?—I do.

Do you expect Lawler will?—I do not know but he will.

By what means?—By his livelihood.

What do you expect that he will be let to live in the city of Dublin?—I do not see what is to hinder him.

Then you do not see as far as I do. Lawler has other expectations?—I believe not, because in the presence of Mr. Kemmis, he told me, he never expected any thing.

Do you not believe he is acting in expectation of his majesty's pardon?—For what?

For his offences?—I do not know any thing of them?

Do you not believe he expects a pardon?—I do not believe it.

I ask you again; if he be guilty of the crimes, that he says he is, do you not believe he expects a pardon? Do you not believe he is guilty?—I believe he is, and I tell you why. When I went to England, in 1792, I got an order to pay him a sum of money—10*l*. I went to look for him, and found he had changed his name: he came to me in the evening after, and told me he had enlisted, which was the cause of changing his name; and I went afterwards to the same place, and the woman told me, there had been a party of soldiers looking for him.

You had 10*l*. to advance him?—I had.

This was in London?—It was.

You knew him there?—I did.

By virtue of your oath, do you know what brought him back?—No.

You never encouraged him?—No.

You employed him upon his return?—I did.

He went to you as his best friend?—He was glad to work with me, as I have some of the best workmen from England.

But he staid a short time?—Gallagher inveigled him from me.

What was the 10*l*.?—George Drury was guardian of this boy and another, and was owner of certain rents. There was 50*l*. a-piece coming to the boys; and 40*l*. had been paid to this man, and 10*l*. remained due. Drury requested I would pay him in London, which I did.

If Lawler, or any other person had told you he did not believe in a God, and afterwards told you he had been guilty of the offences he mentioned here, would you consider him to be a man to be believed in a court of justice?—I never heard any thing against him until this trial.

Do you consider that to be an answer to my question? Why do you evade it?—What is it.

If a man told you, he disbelieved the three persons of the Trinity, and confessed the crimes this man has told, would you take him to be a man, who ought to be believed upon his oath?—I must confess it would shake my credit of him. Upon getting the information I did I thought it my duty to myself, my country, and my king, to let government be acquainted with it.

[Here the evidence closed.]

Mr. Baron George.—Mr. McNally, as you are the single counsel for the prisoner, you are at liberty to observe upon the evidence if you choose, in addition to what you have already argued.

Mr. McNally.—My Lords, I feel myself much indebted to your lordships. I will just make one observation, which I omitted before—In all the evidence against the prisoner with respect to conversations between him and Lawler, they are always stated without the intervention of a third person—all the conversation in Blackhorse-lane was private—without the privacy of a third person, who could disprove the statement. This is the only remark I wish to make, as I will not trouble the gentlemen of the jury farther; although I well know the ability of the gentleman, who is to reply to me. But I have seen the jury take notes of the evidence upon which they will decide, not upon the arguments of counsel. The jury are the judges of the life and death of this unfortunate prisoner—charged with an offence of prodigious weight.

Mr. Solicitor General spoke to evidence, on the part of the crown. He said, that the marked attention of the jury, during the progress of the trial, and the laborious and anxious situation in which their lordships had been placed, during the course of the longest session of Oyer and Terminer, that had been remembered in Ireland, would render him unjustifiable, were he not to condense his observations, within as narrow a compass as possible. He said, that it would be his duty to impress two points upon the minds of the jury. 1st, That the existence of a treason, such as was charged in the indictment, had been established beyond controversy. 2ndly, That there was sufficient evidence to convince every reasonable man, that the crime was brought home to the prisoner at the bar. As to the first point, it was a lamentable, and notorious truth, which the evidence confirmed, not only by parol proof, but by written documents, found upon the associates of the prisoner, and not attempted to be controverted, that this rank and foul treason has not only existed, but had burst forth into acts of most alarming outrage through many parts of the kingdom; and upon the present occasion, we trace it under its various and mysterious modifications to have had the same actuating contagious principle, which has diffused itself from France through those seminaries of political mischief and disease, which under the appellation of societies, clubs, committees, and Defenders, urged on by French missionaries, have infected and endangered both Great Britain and Ireland.

As to the rules of law, said he, matured as they are by a series of judicial determinations in the various cases which have been adjudged upon the subject of treason, and the

stat. 25 Ed. 3rd, what you, gentlemen, have heard from my learned friend the attorney general, and what you will hear from the wisdom and authority of the Court, render it unnecessary for me to detain you upon that part of the case. The meeting, associating, consulting, and confederating with a body of men, leagued and united under the obligation of a deliberate oath, to be true to the French Convention, and to assist the forces of the French (at open war with the state) with an armed confederacy, in case they should invade the kingdom; the enlisting of men into the conspiracy, and the nightly arrangements for numbering and giving officers and discipline to the body, the subscribing money to purchase ammunition, the plundering the peaceable inhabitants of the country of their arms, for the avowed purpose of giving assistance to the invaders, amount in themselves to a direct invitation, and encouragement to the enemy to invade these, his majesty's realms; and are plain overt acts of the treason in the two counts of the indictment, namely, the compassing of the king's death and the adhering to his enemies. Now in the body of evidence brought to substantiate the charge, there is one prominent feature, which arises out of the oath and catechism, which I consider together, as if they were one instrument, each part throwing light on the other, and to which I call the particular attention of the jury; as from the internal and immutable evidence arising from that instrument, from the manner in which it appears to combine the principles of the confederacy, from the authenticity which it has received, not only from the circumstantial evidence by which it was identified, but by which it was traced to the fob of that associated Defender, on whom it was found, by aid of the information of the principal witness, Lawler. It constitutes a most important branch of the case, not only as an irrefragable proof of the treason which teems through every line of it, but also that from the previous description given by Lawler of its contents, and of the person upon whom it was found, there is the strongest degree of corroborating credit given to the whole testimony of that witness.

Of the instructions, and signals, which accompanied that initiating, that ceremony of swearing, you have had a minute description, and Lawler has proved that the prisoner was well acquainted with those mysterious signals. He has also told you, that the first meeting of Defenders, at which he saw the prisoner, was at Stoney-batter, and that he, the prisoner then appeared to him then to be somewhat in liquor. And here in conformity to those principles of moderation and upright candour which have distinguished the conductor of the present prosecutions, I am free to acknowledge, that the prisoner's being somewhat in liquor, is a part of the evidence from which I ought not to draw your attention, and from his manner of saying it. The

witness, in mentioning that fact, shows that his mind is divested of any malevolence towards the prisoner. I will say, however, that if inebriety were to be an excuse for outrage, there would be 99 atrocious criminals in 100 of the lower order of the people of Ireland, who in truth, might plead it in bar of their being convicted. That intoxicating drag which is so unhappily and universally made use of in this country, is the constant preparatory to every thing that is desperate, amongst those, who may not be sufficiently susceptible of being inflamed by the writings of the illustrious Thomas Paine, whose doctrines an ingenious man has aptly called, the whiskey of infidelity and treason. At that meeting at Stoney-batter, which I have mentioned, Hart, who is proved to have been invested with the authority of a committee-man, in the presence of the whole company, expostulated with a person who was just introduced, and appeared reluctant to be sworn, and who desired to know what was the object of the engagement, to which Hart replied, in a loud voice: "*The object is, to take arms from those that have them, that we may assist the French when they land.*" And at the same meeting, Hart commanded all present, to lay their hands upon the table, and to engage on the virtue of their Defender oath to attend on a future evening, that they might proceed to plunder a house of arms.

Upon a subsequent interview between the witness and the prisoner; he, the prisoner, relates the circumstances of a robbery that was committed by him, accompanied by Hart and others, pursuant to their engagements; and the manner of breaking the house, the taking of arms of a particular description, the ringing of a bell, during the robbery, by some person within, and the exact geographical situation of the house, are all related by the witness, from the account the prisoner gave him. And the owner of the house that was robbed has been examined, and has confirmed that account in most of the essential points: as to the arms taken, the bell ringing, the site of the house, and the particular time and manner of the robbery, so as to leave no room to doubt of the prisoner being involved in the transaction.

The witness, Lawler, has undergone the most sifting scrutiny of examination for two days, in the course of this and a former trial. That he was to have been a principal witness, has been publicly known, and the course of the cross-examination, and the evidence adduced by the prisoner, show to demonstration, that the prisoner's counsel have been thoroughly aware and instructed of the evidence for the crown, branched out as it has been into such a variety of place, time and circumstance. It is next to an impossibility, that any fabricated tale of transactions so recent, involving so many persons, and the series of so many facts, could have escaped detection, or that any thing but consistent truth

could have supported itself, without a contradiction, either from the witness himself, or from some other quarter. But nothing of that kind has been attempted or argued. It has been indeed attempted to show, however, that the witness is divested of all sense of religion; that he has been involved in many crimes, and that as he is an accomplice in the crime, which he now promises against another, he deserves no credit himself. Of the three witnesses, who have been called by the prisoner, the two first, after swearing to the irreligious sentiments of the witness, have acknowledged that they themselves continued long in the same political societies with the witness, who had come recommended from the London Corresponding Society, a philanthropic admirer of that same Thomas Paine whose works were their principal study, and you, gentlemen of the jury, are the best judges which of the witnesses have been the most pious of his disciples. But this, you cannot forget, that after the time when Lawler was supposed to be arrested, those two witnesses inquired for him, with the utmost solicitude of regard and friendship for their old associate. But, Lawler afterwards became a penitent and witness for the crown. Whilst he was an unreclaimed criminal, he was their friend; but when, by his discovery, he made atonement, he is infamous in their eyes,

Et hinc ille lachryma.

Whilst he was a Defender, he was virtuous and a man of truth; but now he has revolted from them, and is an infidel. As for the third witness for the prisoner, it has been proved, that under the same impression as the other two, when first resorted to, and asked for the witness's character, he then represented him as a most honest and industrious creature. This appears, from the evidence of Mr. Cowan who was called to the credit of the witness, Lawler, after his credit had been thus impeached; for it is remarkable, that this is the only defence that has been attempted. Gentlemen, you have all heard Mr. Cowan, and you know him, and if any thing could raise a man of his known worth in estimation and merit amongst his countrymen, it would be his conduct on the present occasion. Mr. Cowan has told you of the sedulous industry of Lawler, who worked for him at his trade. He has told you of the voluntary disclosure made by him, at a time when there was not a shadow of accusation against him. He has mentioned to you his motives of conscientious remorse, and his horror of intended massacre, and he says, that he has been uniform and consistent from the first moment of his discovery; and as an instance of his present sentiments of Lawler, he has said that he (Cowan) would employ him hereafter at his trade.

But the learned counsel then interrogated in a tone of some significance.—"What, sir, do you think that Lawler will be set to be

in Dublin." "If so," says the counsel, "I think I can see farther than you do." Good God! can any advocate be so hardy as to insinuate that a witness who comes forward in aid of public justice, must do it at the risk of his life? Are we come to this? Is terror to be hung out to prevent the investigation of truth? And will any man dare, in the face of this tribunal, to raise such a suggestion?

[Here the Court observed, that Mr. McNally was not in court, which they regretted, for though the expressions made use of by him, had not excited the same ideas in their minds as in that of the solicitor general, yet from the sense that might be put on them, it was necessary the words should be explained.]

Mr. Solicitor General.—I did not perceive that the learned gentleman had gone out since I began. I ask pardon for mentioning, in his absence, what I had rather he was present to explain.*

It has been argued, that as this case must turn upon the evidence of the single witness, who is an accomplice in the crimes of which he accuses others, that no jury should credit him, and that no Court should sanction a conviction upon his evidence. I am well aware that such an opinion was formerly contended for, and that even the competence of such a witness has been strenuously argued against. But since the case of Charnock,† who was tried soon after the Revolution, before as great judges as ever sat in Westminster-hall, no attempt has been made to support such an opinion, and capital convictions upon the evidence of a single accomplice have, in some late instances, been sanctioned by all the judges of England as reported by Leach. If it were not so, many dark and dangerous crimes would go unpunished; for the perpetrators of dark crimes are seldom known by any but the accomplices; and more so in this country than any other, where nocturnal outrage has become familiar, and where convictions in most instances could never be had through any other means than the discovery of accomplices. And although a *dictum* to the contrary of the opinion which I maintain may have derived new force by what has lately fallen from an authority which every man must venerate, I will take the freedom to say, that upon principles as sound and as just as ever have been adopted in the law of evidence,

* "Mr. McNally had left court for the purpose of taking some refreshment, and upon his return, being informed of what had passed, explained, and said, his meaning was that Lawler would be so covered with infamy, that no person in Dublin would employ him, and therefore he must seek his bread elsewhere. This explanation was deemed amply sufficient by the Court, and the matter terminated to the satisfaction of all parties."—*Orig. Edit.*
† Ante Vol. XII. p. 137.

and the investigation of truth, that a jury may be well warranted to find a verdict, and judges well warranted to sanction a conviction, even upon the evidence of a single accomplice.

But this is not a case resting upon the evidence of a single accomplice; for exclusive of the intrinsic weight, and consistency of his evidence, here is a number of collateral, corroborative facts, arising from the testimony of others, as to the finding the oath in the fob of Kennedy, where Lawler had previously told it to be—the uniform relation of the facts to James and Cowan, and the detail of the robbery of Finegan's house, of the arms.

Besides that, no general and unqualified remark can attach upon the credibility of all accomplices. There are various gradations and shades of criminality, that might tend to discredit, but neither the laws of God nor man preclude the hope of exculpation by repentance, towards which, a fair, voluntary, and explicit disclosure of his guilt is the first step to gain credit and reception to the penitent. And see how much more strongly this argument will hold in cases of treason than any other. It is of the peculiar essence of that crime, that the intention of the mind, manifested by overt acts, indicative of the intention, shall be a completion of the guilt. But evil "into the mind of man may come and go." And no one of sound sense will say, that the man whose deluded mind had been betrayed into such overt acts, who took an early opportunity to revolt from his associates, before they accomplished their horrid purpose, and from a principle of remorse disclosed and prevented the completion of the mischief, shall in point of moral turpitude be deemed as infamous as the man who comes with his bloody hands to relate the murder which he had assisted others to commit.

There is one other striking feature of this case, which in my opinion, goes strongly to set up the credit of Lawler, and to attach criminality upon the prisoner and his associates. For it appears, that the instructions from whence the cross-examination has been furnished, could not have been derived from any other source, but a direct and intimate privacy and participation in all that criminality which is imputed to the witness. Thus we have it from the cross-examination, that Paine's Age of Reason was the *vade mecum* of the societies.—That the witness was the person best armed at the watch-house and at Stoney-batter:—from the cross-examination you have it, that the witness was employed by Le Blanc, the Frenchman, who has appeared a principal actor amongst the Defenders, as well as leader in a conspiracy to put Cockayne out of the way before Jackson's trial. Who is it that has heard what this cross-examination has brought out who does not believe the men in the dock were privy to the whole, and who does not stand appalled at the horrid work that midnight treason has been hatching?—And who is it that has heard the learned

counsel ask such questions from the secret cabinet of his instructions, who is not convinced that privacy and participation have furnished those examinations, and linked traitors together through every stage from that society, in which Lawler's mind was first corrupted, down to the lowest Defender that has been the desperate instrument to carry into effect the most alarming system of assassination, treason, and rebellion.

These, gentlemen, are circumstances, which from their nature, could never have been revealed by any man who had not shared in their criminality; and being brought out by the prisoner, by their collision, they throw a light upon the whole, and flash conviction upon the mind of every man who heard them.

And now, gentlemen, give me leave to congratulate you and the country in which we live, however painful this inquiry has been, that after the irrefragable proof which we now have of the co-operation of French missionaries, with the promoting of treason and sedition at home, there yet remains that fair and impartial appeal to justice, which the prisoner, or those who have involved him, could not find in any part of the world, that is not blessed by the British constitution—that constitution, which they have endeavoured to destroy.

In order to rescue the deluded from their guilt by timely example—in order to save us from the degrading supplication to military justice—in order to save us from these horrid butcheries which have deluged so great a proportion of Europe in blood;—I trust, that by a conscientious discharge of your duty, you will give your country cause to look up with veneration to the trial by jury.

Mr. Baron George.—Gentlemen of the jury;—The prisoner is indicted for high treason, in compassing the death of the king, and adhering to the king's enemies. The treason in adhering to the king's enemies is that to which, in my humble opinion, you ought to apply the evidence you have heard. By so doing, you will avoid every thing that would embarrass you in doing justice in this case. Gentlemen, the indictment states, that a public war existed between the king, and the persons exercising the government of France: it charges the prisoner with adhering to those enemies of the king, and it sets out what are called overt acts, which are necessary to be proved, in order to substantiate the charge. Gentlemen, I shall point your attention to one of these, in order that you may apply the evidence as I repeat it from my notes. It charges the prisoner with this, that he did join, unite, and associate himself with divers other false traitors, and with them did enter into, and become one of a party formed under the denomination of Defenders, for the purpose of adhering to the persons exercising the government in France, in case they should invade this kingdom. Therefore, in my apprehension, you ought to direct your attention

to ascertain this fact to your satisfaction, whether the prisoner did unite himself with Defenders, for the purpose of adhering to the persons exercising the government of France, and assisting them, in case they should invade Ireland.

The principal part of the evidence and the proofs, in this case, depends upon the testimony of William Lawler. The most material consideration, in truth, that arises in this case, is, whether any and what credit is due to the testimony of that man?—For if the testimony he has given, shall be believed to be truth, I say, if that shall appear to be the fact (but concerning which, I and the rest of the Court will carefully avoid intimating any opinion of our own) in my apprehension, the present indictment will be proved against the prisoner, and you will be bound to find him guilty. But, gentlemen, to ascertain what degree of credit is due to him, it is the duty of the Court to apprize you of the legal objections to his credit. For (under the circumstances) he is a competent witness; but it is our duty to put you in possession of those objections to his credit, after which you will be better able to estimate the weight of his testimony.

Gentlemen, the law is clear, that a man who is an infidel, and who has no sense of any religion, not believing in a future state of rewards and punishments, would not be a competent witness in a court of justice. A man having any species of religion must be sworn according to the ceremonies of his religion; but the law considers it a farce to administer an oath to a man not believing in God and a future state. There is another objection to the competency of a witness, if he be rendered infamous by the judgment of any court competent to convict him. If a witness be convicted by the judgment of a court of treason or felony, or any scandalous offence, such as perjury, he is held by the law of the land to be an incompetent witness, and such a man is not even to be heard by a jury.—A witness also is incompetent, who is personally interested in any case in which he is produced. And therefore, where this interest consists in pecuniary consideration, or of any other kind, such as pardon for offences, it is a fit subject for the jury to consider.—In a civil case, clearly, if a witness be interested, he cannot be examined. But in criminal cases, for the safety of the public, getting rewards does not in a court of criminal jurisdiction, disable him from giving testimony; though it may go to his credit. Gentlemen, under these circumstances, it is for you to consider, where the whole weight of the trial rests, in a great degree upon the testimony of one witness, how far, the fear of God has made him tell truth; to consider his moral character, and how much he regards the principles of society and the sanction of the laws, inflicting punishment for perjury. You are also to consider, whether the person has any weighty interest to give evidence which may induce him to warp

from the truth. If you believe this witness had not any principles of religion, that he is of infamous life and conversation, interested in the event of the case, then certainly his testimony which he gives can only be supported by its own intrinsic weight, by consistency in itself. A witness suffering under a disability from personal character, can only derive credit from a long detail of facts, well and probably connected. Therefore, gentlemen, in repeating the evidence over to you, I mention this observation, in order that, as I go along, you may direct your attention accordingly, and see whether there be any circumstances, which carry along with them intrinsic conviction, which will satisfy you, of their truth. No doubt, gentlemen, the most satisfactory evidence is, where we see a man of religion, having an upright opinion of God, giving a clear and connected account of any transaction. Gentlemen, you are to determine, whether in the evidence which has been given, any such circumstances are to be found, and upon the whole matter, according to your consciences, and the best of your judgments to find the truth. The law allows the testimony of a man to be heard in a court of justice, under particular circumstances, even after he is detected in his own crimes, and is apprehended for them, and when, consequently, he is giving testimony to save himself and accuse others. But the condition of a man is at least one degree short of that, when he comes forward to give evidence, before he is suspected, or charged, or accused of those offences which he proves; who voluntarily comes forward, and appears at a time when he might make his escape, he rather remains and gives evidence voluntarily to accuse others. Gentlemen, upon the whole of the case, you are to consider the motives which influenced the man in his testimony, and couple them with the rest of the evidence, and consider under all the circumstances, whether you do, or do not doubt the truth of his relation; because if you doubt the truth of the relation, you are bound to acquit the prisoner.

Gentlemen, the evidence of Lawler was—[Here his lordship read the whole evidence from his notes—and then proceeded]—Mr. Cowan would have been as bad as any of the party, if he concealed the information which he received; it would be against the oath of his allegiance. If a man becomes acquainted by any means with treasonable practices, and takes no part, it will be a misprison. But in a master of a corporation, it would be a perjury, not to make it known. How could any man live in society, who had concealed matters of this kind, which, if well-founded and not checked, tends to let loose all ranks of men upon one another?

This, gentlemen, is the whole evidence; which I have stated in the minute manner I did, after the observation I made to you, that you might see, whether it carries conviction to your minds. There are several facts which

you must find, before you can convict the prisoner. This indictment states—and in truth the prosecution is founded upon that fact—that there is a party of men associated in this kingdom under the denomination of Defenders, for the purposes and with designs, to assist, and adhere to the king's enemies, in case they should invade Ireland. It is necessary for you, gentlemen, in order to ascertain, whether becoming a Defender be treason, or a lesser offence, to know what the object of these men is, in becoming Defenders. Their object is discovered by their oath, their declaration and catechism, and the acts which they do.—As to the oath which you have heard, you must observe that the persons sworn upon that oath, who owe to their king allegiance during the joint lives of themselves and the king, qualify their allegiance to the king, *whilst they live under the government*:—qualifying their allegiance, having in contemplation a subversion of the king's government. The person taking the oath swears to be true *whilst he lives under the government*, presuming that something will be done to abridge that government.—He swears to be true to committees, superiors, commanders and officers.—Who are these? It is for you to say to what the words should refer. Are they persons holding superiority under the king, or against the government of the country?—Are these men commanders of the king's army, bearing the king's commission, or are they such as has been mentioned, when one of the party required to know the number of Defenders, that officers might be appointed? The party is sworn to obey in all lawful proceedings.—To what does that refer?—He is sworn to be obedient to the laws made by the committee—Is that according to the laws of the land—or their own committee?

Gentlemen, it is fair, in my humble apprehension, that you should consider the import of these two papers together. The other instrument, which is a sort of catechism, begins in this way—"I am concerned.—So am I.—With whom?—The National Convention? meaning the Convention of France—"What is your design?—to dethrone all—gs"—the innuendo is to dethrone all kings.—You are to judge, whether that innuendo be true. If the designs of these Defenders are, that they are concerned with the National Convention of France, that their designs are, to quell all nations, and dethrone all kings—if you couple the papers together and consider those to be the designs of Defenders, you are to consider, whether they are treason or not? What are their acts?—It was proposed, that arms should be taken from the houses to aid the French, when they should come.—Whether Leary was there at the time the proposal was made, or at what particular time he was there does not appear; but he told Lawler, he was out that night; and you are to consider whether that was a common felony or burglary, or done with an intent to take arms to use

them as these people should think fit, when the country would be invaded. Persons collecting arms in this manner cannot be otherwise than adhering to the king's enemies. For what is so likely to incite invaders to come here, as to know, they will find assistance upon their coming.

Gentlemen, I have stated these things to you and will conclude now by saying, that if you believe Lawler, this indictment is proved against the prisoner. And if it shall, when he is charged upon an overt act of having become a Defender associated for these purposes, it will be a clear declaration to the public what the object of this society must be. Every man acting in concert with traitors, or assisting them before or after the act, is a principal traitor, for in treason there are no accessaries. Any sort of aid, or encouragement, that will make a man an accessory before or after in any other offence, will make a man a principal traitor in treason; and therefore you will consider, whether it makes any difference in the degree of guilt, that one appears to take a leading part, and another, one of his followers in the mischief—What injury could any traitor do, if he had not followers to assist him.

Gentlemen, if you find upon the whole of the case, inferences from the evidence of the facts stated, amounting to such a conviction brought home to your minds, as leaves no doubt, but that the prisoner is one of the persons called Defendants, and that their objects are treasonable you are bound to find him guilty. But if under all the circumstances you should have any doubt, such as reasonable men may entertain, consistently with their consciences and their duty to their country, you will not consider the consequences whatever they may be, but find the truth, and acquit the man.

Mr. Justice *Chamberlain*.—Gentlemen of the jury; It does not occur to me, that I can add any thing to what you have heard.

Mr. Justice *Finucane*.—Gentlemen; I do not think I can add to it.

The Jury retired for one hour, and brought in a verdict.—*Not Guilty*.

[Wednesday, December 30.]

Clayton and Cooke were brought up to be tried, when Mr. Attorney-general moved to postpone their trials; it had appeared upon the former trials, said he, that there are persons wicked enough to take away the lives of witnesses. One of the witnesses who was to prosecute those prisoners does not attend, and Mr. Cowan, another witness, has been attacked with the gout in his stomach, and cannot attend.

Mr. *M'Nally*.—I have a doubt how far the Court has any discretion, under the Habeas Corpus act, to postpone these trials.

Mr. Attorney General.—I admit, that if

no indictment be found the first session, after committal, the prisoner must be discharged; and if one be found, and he is not tried the second session, he is to be discharged. But the act is silent as to the right of being tried. Then, my lords, I leave it to your discretion. Upon the Habeas Corpus act, the right of trial remains as before. The prisoners may be discharged, but they are still liable to be tried.

Court.—If the prisoners presented petitions upon the first day of the session after their committal, and are not tried on the second commission, they are entitled to be discharged.

Mr. Attorney General, then addressed the Court, and the by-standers, in order to have it fully understood by the prisoners and the public, that though the persons now in custody should be discharged from imprisonment, yet the prosecution was by no means given up, but would on the contrary remain in full vigour and be carried on as soon as the king's witnesses should be forth-coming.—He then descanted on the causes of those enormities which had brought the peace of the city and country, the property and lives of the public, into the very imminent danger in which they had so lately been, and from which he hoped that the proceedings of this commission would secure them.—Those evils he attributed to the very relaxed state of morality—the extreme and culpable inattention of masters and fathers of families to the manners and conduct of their children, and to the growing and alarming prevalence of irreligion and infidelity, which wherever they became general, destroy public happiness and public safety, and loosen all the bonds which hold society together.

As one instance of culpable neglect in the public to the morals of the rising generation, he mentioned the conduct of those many masters who are become too proud to let their apprentices sleep in their houses.—It was a known fact, he said, that apprentices now were generally sent to lodge in other houses than their masters, and in that profession with which he was most nearly connected, that of an attorney, there were only two men in the city of Dublin who kept their apprentices in their own houses. The natural consequence of this was, that boys at a very early age became fit subjects of those wicked men to work on, whose object was, to remove every religious and moral principle from the mind in order to make way for those abominable doctrines which they wished to inculcate.—He was not yet become a very old man, and yet he was old enough to remember a time when fathers and masters kept their children and apprentices at home, and taught them to pass their vacant evenings in some innocent amusement—now the evenings and the Sabbath were devoted to clubs and

societies, where folly was taught to hatch treason, and imbecility to plot massacre.—To prevent effectually these dreadful crimes, which it was now fully proved had been attempted, the public must exert their own powers—the master and the father must again become the guardian of his servant and his child's innocence; and in order effectually to preserve that innocence, the best way would be found to guard them against the temptations and the opportunities of vice. Much pains had been taken, he said, to misrepresent to the public what passed in that place;—it had been attempted to throw such a degree of odium on the king's witnesses, as should induce the public to believe their testimony insufficient to convict men charged with secret and most enormous crimes.—It was true, indeed, that the witness on a late prosecution had been proved to be a man who had been guilty of very atrocious offences, but by whom can

men who have committed crimes in secrecy ever be convicted but by accomplices? If men of purity and innocence only can convict in such cases, crimes the most dangerous to the public must for ever pass unpunished.

Cooke, Clayton, Turner, Flood, Hanlon and Clarke were then discharged from their imprisonment.

Thomas Dry, who had been out on bail on a charge of being a Defender, was called; and appearing, he was discharged on his own recognizance of 50*l*.

Mr. *Attorney General* said, that the principal witness against *Oliver Corbally*, charged with high treason, had absconded. The crown therefore would not produce any evidence against him.

A jury was then impanelled, to whom *Oliver Corbally* was given in charge, and by whom he was acquitted for want of prosecution.]

615. Proceedings on the Trial of THOMAS KENNEDY* for High Treason; before the Court holden at Dublin under a Commission of Oyer and Terminer, on Monday February 22: 36 GEORGE III. A. D. 1796.†

[Wednesday, December 23rd, 1795.

BRADY, Kennedy and Hart were this day brought up and being severally asked, whether they were ready for their trials, answered they were not, and an affidavit was sworn by Kennedy for the purpose of postponing their trials.

Mr. *M^cNally*.—My lords, I am humbly to move your lordships to postpone the trials of these prisoners, upon the affidavit which has just been sworn by Kennedy on the part of himself and the other two prisoners. The affidavit states that John Le Blanc, late of this city, but now of Belfast, is a material witness for the prisoners, without the benefit of whose testimony, they cannot with safety go to trial; that due diligence would have been used to procure his attendance but that they did not know until after the trial of James Weldon yesterday, that Le Blanc's testimony would be material. The affidavit also states that this application is not made for the purpose of delay.

Mr. *Attorney General*.—My Lords, although I could show that the affidavit is not sufficient to induce the Court to put off the trial, yet I feel that it is my duty, unless circumstances made it absolute neces-

sary for the public safety to bring on the trials, to show the prisoners every indulgence. Therefore, my lords, I shall not resist this application, and when I do this, I yield a great deal because from information, which I have received since yesterday, I should be able to lay before the Court evidence to support that which was given on the part of the crown. But at present, I yield to this application.

The trials of these three men were accordingly postponed.

Mr. *Attorney General*.—My Lords, from this alteration in the arrangement which I made for this day, I am not prepared to go on with any other trial.

And thereupon the Court adjourned.]

Monday, February 22nd, 1796.

The Earl of Clonmell sat as the Judge of the Commission, and was assisted by Mr. Justice Chamberlain and Mr. Baron George.

Brady, Kennedy and Hart having postponed their trials at last commission, upon the indictment then depending, new bills were sent up to the grand jury, which being returned true bills; copies thereof were served upon the prisoners previous to this commission, and at their own desire, Messrs. *M^cNally* and *Lysaght* were assigned their counsel.

This day Thomas Kennedy was put to the
2 A

* See the next case.

† Taken by William Ridgeway, esq. Barrister at Law.

bar, and arraigned upon the following indictment:

Note. The caption of this indictment varied from that in the former cases in this particular:—After setting out the commission as before* it proceeded “to deliver the gael of all the prisoners and malefactors therein, as often as occasion should require by the oath of Richard Manders of the city of Dublin esq. Edward Burne,” &c. “(setting out twenty-three names) of the same, merchants, good and lawful men of the county of the city of Dublin, aforesaid, then and there impanelled, sworn and charged to enquire for the said lord the king, and for the body of the said county of the said city of Dublin,” it is presented in manner and form following, that is to say:

“The jurors for our lord the king, upon their oath present that an open and public war on the 20th day of August in the 35th year of the reign of our sovereign lord George the third by the grace of God of Great Britain France and Ireland king defender of the faith and so forth and long before was and ever since hitherto by land and by sea hath been and yet is carried on and prosecuted by the persons exercising the powers of government in France against our most serene and illustrious and excellent prince our said lord the now king and that Thomas Kennedy of the city of Dublin and county of the said city yeoman and Edward Brady of the said city and county of the said city yeoman subjects of our said lord the king of his kingdom of Ireland well knowing the premises but not having the fear of God in their hearts nor weighing the duty of their allegiance and being moved and seduced by the instigation of the devil as false traitors of our said lord the now king their supreme true lawful and undoubted lord the cordial love and true obedience which every true and dutiful subject of our said sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and with all their strength intending the peace and tranquility of this kingdom of Ireland to disturb and the government of our said lord the king of this his kingdom of Ireland subvert and our said lord the king from his royal state title honour power imperial crown and government of this his kingdom of Ireland to depose and deprive and put our said lord the king to death and final destruction to bring the said Thomas Kennedy and Edward Brady and each of them on the 20th day of August in the 35th year of the reign of our said lord the king and on divers other days and times as well before as after that day at Suffolk-

“street in the parish of St. Andrew in the city of Dublin and the county of the said city of Dublin aforesaid with force and arms falsely wickedly and traitorously did compass imagine and intend and each of them did compass imagine and intend the said lord the king then and there their supreme true and lawful lord of and from the royal state crown title power and government of this realm of Ireland to depose and wholly deprive and the said lord the king to kill and put to death and that to fulfil and bring to effect their most evil wicked and treasonable imaginations and compassings aforesaid the said Thomas Kennedy and Edward Brady as such false traitors as aforesaid and during the said war between the said lord the king and the said persons so exercising the powers of government in France as aforesaid to wit on the said 20th day of August in the 35th year of the reign aforesaid at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the said city of Dublin aforesaid and in the county of the said city of Dublin aforesaid with force and arms falsely maliciously and traitorously did join unite and associate themselves and each of them did join unite and associate himself to and with divers false traitors to the jurors aforesaid as yet unknown and did then and there with such false traitors to the jurors aforesaid as yet unknown enter into and become of a party and society formed and associated under the denomination of Defenders with design and for the purpose of aiding assisting and adhering to the persons so exercising the powers of government in France and so waging war as aforesaid against our said sovereign lord the king in case they should invade or cause to be invaded this his kingdom of Ireland and afterwards and during the said war between our said lord the king and the said persons so exercising the powers of government in France and enemies of our said lord the king on the 20th day of August in the said 35th year of the reign of our said lord the king and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid and county of the city of Dublin aforesaid they the said Thomas Kennedy and Edward Brady as such false traitors as aforesaid in further prosecution of their treason and traitorous purposes aforesaid did and each of them did with divers other false traitors whose names are to the jurors aforesaid of our said lord the king as yet unknown then and there meet and assemble to confer treat and consult for and about the adhering to joining aiding and assisting of the said persons so exercising the powers of government in France as aforesaid and being enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland and afterwards to wit on

* See the case of Weldon, *ante*, p. 225.

"the twentieth day of August in the thirty-fifth year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said Thomas Kennedy and Edward Brady as such false traitors as aforesaid in the further prosecution of their treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names to the said jurors are as yet unknown wickedly and traitorously associate and unite themselves to and with each of them did associate and unite himself to and with divers other false traitors unknown to the jurors aforesaid and did along with said false traitors to the jurors aforesaid unknown enter into and become and each of them did enter into and become of a party and society united and associated under the denomination of Defenders with design and for the end and purpose of deposing and dethroning by force and arms our said lord the king and afterwards to wit on the said 20th day of August in the said 35th year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said Thomas Kennedy and Edward Brady as such false traitors as aforesaid in further prosecution of their treason and traitorous purposes aforesaid did then and there with divers other false traitors whose names to the said jurors are as yet unknown wickedly and traitorously in order to enlist and procure one William Lawler a liege subject of our said lord the king then and there being to be aiding and assisting to the persons so exercising the powers of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland and to engage and bind himself thereto did then and there traitorously administer and cause to be administered on oath to the said William Lawler he the said William Lawler being then and there for that purpose previously sworn a certain profession declaration and catechism to the purport following that is to say 'I am concerned.—So am I.—With who? With the National Convention (meaning thereby the National Convention of France).—What is your designs?—On freedom.—Where is your designs?—The foundation of it is grounded in a rock.—What is your designs?—Cause to quell all nations, dethrone all kings, to plant the true religion in the hearts, be just.—Where did the Cock crow when the whole world heard him?—In France.—What the pass word?—Eliphismatis.—And afterwards to wit on

"the said 20th day of August in the said 35th year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and county of the city of Dublin aforesaid the said Thomas Kennedy and Edward Brady as such false traitors as aforesaid in further prosecution of their treason and traitorous purposes aforesaid did then and there and each of them did then and there with divers others false traitors whose names are to the said jurors as yet unknown wickedly and traitorously in order to encourage corrupt procure and enlist one William Lawler a subject of our said lord the king to become one of a party and society formed united and associated for the purpose of subverting and overturning by force and arms the government of our said lord the king of and in this kingdom of Ireland as by law established and of dethroning our said lord the king did then and there traitorously encourage procure and enlist the said William Lawler to join himself to and become one of a party and society formed united and associated for the purpose of subverting and overturning with force and arms the government of our said lord the king of and in this kingdom of Ireland as by law established and dethroning our said lord the king and afterwards to wit on the said 20th day of August in the 35th year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and in the county of the city of Dublin aforesaid the said Thomas Kennedy and Edward Brady as such false traitors as aforesaid in further prosecution of their treason and traitorous purposes aforesaid did then and there and each of them did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously in order to enlist and procure one William Lawler a subject of our said lord the king to be aiding and assisting to the persons exercising the powers of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland and to bind and engage himself thereto did then and there traitorously administer an unlawful oath to the said William Lawler to the purport following that is to say—'I, William Lawler, of my own good will and consent, do swear to be true to his majesty king George the third, whilst I live under the same government, more I swear to be true, aiding, and assistant to every brother bound to me by this application, and in every form of article from its first foundation January 1790, and in every amendment hitherto, and will be

“obedient to my committees, superiors, commanders, and officers in all lawful proceedings and not otherwise, nor will I consent to any society or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother, nor in any violation of the laws, but to protect my life and property, and the lives and properties of my brethren, and I will subject myself to my committee-men in all lawful proceedings, and not otherwise during the reign of his majesty king George the third whilst I live under the same government. I likewise swear I will meet when and where my committee will please, and will spend what is pleasing to president and company; I will not quarrel nor strike any person whatsoever, knowing him to be such, but will live lovingly and friendly with every one under that denomination; I will not rise any fight or quarrel on account of my present *intrus*, or back that for unto my ‘brotherhood.’ And afterwards to wit on the said 20th day of August in the 35th year of the reign aforesaid and on divers other days as well before as after that day with force and arms at Suffolk-street aforesaid in the parish of St. Andrew aforesaid in the city of Dublin aforesaid and in the county of the city of Dublin aforesaid the said Thomas Kennedy and Edward Brady as such false traitors as aforesaid in further prosecution of their treason and traitorous purposes aforesaid did then and there and each of them did then and there with divers other false traitors whose names to the said jurors are yet unknown wickedly and traitorously in order to enlist and procure one William Lawler a subject of our said lord the king to be aiding and assisting to the said persons so exercising the powers of government in France and enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland aid and assist and then and there were and each of them was then and there present aiding and assisting one James Weldon in administering an unlawful oath to the said William Lawler and in administering to and causing the said William Lawler to rehearse and repeat on oath a certain profession declaration and catechism the said unlawful oath being to the purport following that is to say—‘I, William Lawler, of my own good will and consent, do swear to be true to his majesty king George the third, whilst I live under the same government, more I swear to be true, aiding, and assistant to every brother bound to me by this application, and in every form of article from its first foundation, January 1790, and in every amendment hitherto, and will be obedient to my committee, superiors, commanders and officers in all lawful proceedings and not

“otherwise, nor will I consent to any society, or any brother of an unlawful character, but will observe and obey the laws and regulations of my committee to whom I belong determined brother, nor in any violation of the laws but to protect my life and property, and the lives and properties of my brethren; and I will subject myself to my committee-men in all lawful proceeding, and not otherwise during the reign of his majesty king George the third, whilst I live under the same government. I likewise swear I will meet when and where my committee will please, and will spend what is pleasing to president and company; I will not quarrel nor strike any person whatsoever, knowing him to be such, but will live lovingly and friendly with every one under that denomination; I will not rise any fight or quarrel on account of my present *intrus*, or back that part for unto my brotherhood; and the said profession declaration and catechism being of the purport following that is to say—‘I am concerned.—So am I.—With who?—With the National Convention, (meaning thereby the National Convention of France.)—What is your designs?—On freedom.—Where is your designs?—The foundation of it is grounded on a rock.—What is your designs?—Cause to *queal* all nations, dethrone all kings, to plant the true religion in the hearts, be just.—Where did the Cock crow when the whole world heard him?—In France.—What is the pass word?—Eliphismatis.”—And the said jurors of our said lord the king upon their oath further present that an open and public war on the said seventeenth day of August in the thirty-fifth year of the reign of our said lord George the third and so forth and long before and ever since hitherto by land and by sea hath been and is carried on and prosecuted by the persons exercising the powers of government in France against our most serene illustrious and excellent prince George the third now king of Ireland and so forth and that the said Thomas Kennedy and Edward Brady (being then and there subjects of our said lord the king) of his kingdom of Ireland well knowing the premises not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our most serene illustrious and excellent prince George the third now king of Ireland and so forth and contriving and with all their strength intending the peace of this kingdom of Ireland to disturb and the government of this his kingdom of Ireland to subvert.—The said Thomas Kennedy and Edward Brady on the twentieth day of August in the thirty-fifth year of the reign aforesaid and on divers other days and times as well before as after that day with force and arms at Suffolk-street aforesaid in the

"parish of St. Andrew aforesaid in the city
 "of Dublin aforesaid and county of the city
 "of Dublin aforesaid unlawfully and traitor-
 "ously were and each of them was adhering
 "to aiding and comforting the said persons
 "exercising the powers of government in
 "France and enemies of our said lord the
 "king as aforesaid and that the said Thomas
 "Kennedy and Edward Brady in the pro-
 "secution and execution of the said traitorous
 "adhering of them the said Thomas Ken-
 "nedy and Edward Brady to the said per-
 "sons exercising the powers of government
 "in France as aforesaid and being enemies of
 "our said lord the present king as aforesaid
 "to wit on the twentieth day of August in
 "the thirty-fifth year of the reign aforesaid
 "at Suffolk street in the parish aforesaid
 "and in the county of the city of Dublin
 "aforesaid with force and arms falsely ma-
 "liciously and traitorously did join unite and
 "associate themselves and each of them did
 "join and associate himself to and with
 "divers false traitors to the jurors aforesaid as
 "yet unknown and did then and there and
 "each of them did then and there with such
 "false traitors to the jurors aforesaid as yet
 "unknown enter into and become of a party
 "and society formed and associated under
 "the denomination of Defenders, with design
 "and for the purpose of aiding assisting and
 "adhering to the said persons so exercising
 "the powers of government in France and so
 "waging war as aforesaid against our said
 "sovereign lord the now king in case they
 "should invade or cause to be invaded this
 "his kingdom of Ireland. And the said
 "Thomas Kennedy and Edward Brady in
 "the prosecution and execution of the said
 "traitorous adhering of them the said Tho-
 "mas Kennedy and Edward Brady to the
 "said persons exercising the powers of go-
 "vernment in France as aforesaid and being
 "enemies of our said lord the present king as
 "aforesaid to wit on the twentieth day of
 "August in the thirty-fifth year of the reign
 "aforesaid at Suffolk-street in the parish
 "aforesaid and in the county of the city of
 "Dublin aforesaid with force and arms
 "falsely maliciously and traitorously did join
 "unite and associate themselves, and each of
 "them did join and to and with divers false
 "traitors to the jurors aforesaid as yet un-
 "known and did then and there and each
 "of them did then and there with such false
 "traitors to the jurors aforesaid as yet un-
 "known enter into and become of a party
 "and society formed and associated under the
 "denomination of Defenders with design and
 "for the purpose of aiding assisting and
 "adhering to the said persons so exercising
 "the powers of government in France and so
 "waging war as aforesaid against our said
 "sovereign lord the now king."

The same overt acts were stated in support
 of the second count, and in the same

manner as set forth in the first, and then
 the indictment concluded as in the pre-
 ceding cases.

The prisoner pleaded—NOT GUILTY.

The following gentlemen were sworn upon

THE JURY.

Alex. Kirkpatrick.	Joshua P. Meredith.
Samuel Tyndal.	George Adamson.
Cornelius Gautier.	Samuel Middleton.
John Evatt.	John Ormston.
David Weir.	Meade Nesbitt.
Wm. Watson, jun.'	Godfrey Bourne.

Mr. *Attorney General*.—My lords, and gentlemen of the jury—I am in this case counsel for the crown.—Gentlemen, you are engaged upon a subject of the last importance;—a subject, the proper discharge of which may tend to restore peace to the country. But while it must be the object of every man to attain that end, it must not be attained by innocent blood. It is your duty to decide between the crown and the prisoner. It is the duty of us all to come at the truth;—having found it you will give your verdict accordingly. If the prisoner be innocent, you will acquit him. If on the other hand you be satisfied of his guilt, as men having a regard to the sacred obligation of an oath you will find him guilty, in order that by the example, other men may be deterred from committing the highest crimes known to the law.

It will be my duty, gentlemen, to state the facts, which will be given in evidence before you; and I shall briefly observe upon the crime for which he is indicted. Unhappily, gentlemen, the crime of treason has been too much the subject of discussion for some time past—a crime so little known in this country for an hundred years. The prisoner at the bar stands charged with high treason, in two respects; in imagining the death of the king, and in adhering to the enemies of the king. With regard to the first, you are to understand—and I will state it but briefly, as the Court will enlarge more fully upon it—that to find a man guilty of compassing the death of the king, it is not necessary that the jury should be satisfied, that the intent was to take away the life of the king; it is sufficient, that you are satisfied, that the intent was such as necessarily led to that fatal consequence. If a man intend to levy war and dethrone the king, although in his own mind he has pre-determined not to put the king to death, yet, you being satisfied that he intended to dethrone the king, that, in the eye of the law is a compassing of his death: because the one cannot take effect without the other following almost of necessity. If you, gentlemen, shall be satisfied, that the prisoner meditated to do any act which led in its consequences to the death of the king, then you are to find the prisoner guilty.

With regard to the second charge, that of adhering to the enemies of the king, it is im-

possible to make it more explicit, than the ordinary form of words. The crime of high treason, which you are now sworn to pass your verdict upon, differs in the manner of establishing the guilt, from any other known in the law. The imagination or intent to commit the crime, is the crime itself. The mere intent, in any other case, will not constitute the crime; but because the king is the chief magistrate of the state, and his presence is necessary to the tranquillity of the state and of individuals, the law has made the imagining, intent and design in that instance criminal; and in that instance alone, the intent is a crime; but the law, while it does thus preserve the life of the chief magistrate, does, with equal care, guard the life of the subject charged with such an offence; and though the imagination constitutes the crime, yet the law says, there must be evidence of a *fact done* to show that imagination; that is called an overt act, an act openly done. In the present case, it is not necessary that you should embarrass your minds with the charge of compassing the king's death, because if the evidence shall be given according to my instructions, it will support the charge of adhering to the king's enemies, and that is evidence of compassing the king's death. In short, the charge will be proved, that he adhered to the enemies of the king; and that will be established by clear overt acts. There are eight of them stated in the indictment; I shall not enumerate them all, but confine myself to those which are so plain that it is impossible for any man not to understand them, and will be so fully proved that no doubt can be entertained.

Gentlemen, there has existed, and there does exist within this kingdom of Ireland—what we all know, for it is impossible for a jury to shut their eyes against it—a treasonable conspiracy against the established government in church and state, by persons styling themselves Defenders in various parts of the kingdom, uniting themselves by signals and signs, by which they could be known to one another in any part of the country. These signals have been communicated to them from quarters not yet perfectly discovered; but the existence of the conspiracy has been proved, and will be again proved to you; it is as notorious as that the king reigns, or any other historical fact. The charge which you are now to try is, that the prisoner was one of that conspiracy. The overt acts to prove this, are what I shall now mention: a man of the name of William Lawler—
[Here Mr. Attorney General stated the transactions which took place at the different meetings, which being detailed in the preceding cases, it is thought unnecessary to repeat. He then proceeded]—Gentlemen, if the evidence be as stated, the only question for your consideration will be, what credit should be given to the witness, Lawler?—You may be told that he is a man of abandoned and immoral

character, flagitious in his conduct, and reprobate in his principles, and therefore you are not to place any reliance upon his testimony. —Gentlemen, I do not wish to conceal any thing respecting the conduct, the manners, or the principles of the witness—he was certainly, at one time, an accomplice in guilt with the prisoners at the bar; but from whom is information of treasonable designs to be had, if it be not received from such men? Here the treason has been carried on with secrecy—a secrecy secured by the solemnity of oaths and mutual pledges of attachment. If therefore, accomplices are not received, the system of treason must proceed until it is complete, and triumphs with impunity over justice and law. Respectable characters are not to be expected in such cases; loyal subjects will not embark in dark plots, conspiracies, and machinations against the state. Here has been a treasonable conspiracy hatched in secret, which in all probability never would have been developed, but from the information of persons actually implicated in the crime. But, gentlemen, though the witness who will be produced this day before you, might have been for a time connected with traitors, and an abettor of their conspiracies, will it be argued, that he might not have been a deluded man—that he might not have been awakened to a sense of his guilt, stop short before the completion of their crimes, and becoming sensible of the danger in which he had involved society, endeavour to make some atonement to his country, by confessing his criminality, discovering his accomplices, and rescuing his fellow subjects from the horrors of confusion, anarchy, and bloodshed; into which they were on the brink of being overwhelmed?

But in truth, gentlemen, this witness will not appear in the light of a common approver, giving testimony from the hope of reward, and with a view to save his own life. This man was not in such a situation—no charge was made against him, he was not in custody, nor was any reward offered for discovery. He made his confession voluntarily; it was the conscientious result of a repenting mind, and of alarm and terror excited by the discovery of designs of blood and massacre, which had not been previously communicated to him. Neither, gentlemen, are you to consider him as an uncorroborated witness. On the contrary, his testimony is confirmed by facts incapable of contradiction. Indeed the law of treason in Ireland, makes the evidence of one witness sufficient to convict a prisoner, if that evidence be received by a jury as credible. In the present case, you will have strong concurring evidence to establish the veracity and consistency of the witness, namely, papers found in the fob of the prisoner's breeches, which papers were so found in consequence of the previous information given to the magistrate by the witness. But, I do not urge this with a view of making an

impression upon your minds unfavourable to the prisoner; the evidence will be highly deserving of your consideration, and I have no doubt, will be minutely attended to.

Gentlemen, before I conclude, I must beg leave to say a word with respect to the attempts which have been made to influence the public mind, and agitate the feelings of the public, by abominable and scandalous publications in newspapers, reflecting upon the credit of Lawler, the witness—publications which have been filled with misrepresentation, and are calculated to defeat the ends of public justice. Gentlemen, I do not say this to raise a prejudice in your minds against the prisoner, but to encounter that which by possibility may have been excited through the medium of those publications to which I have alluded.—In truth, gentlemen, the trials of Weldon and Leary went upon distinct grounds; and I do aver, and shall unquestionably prove it, that upon the evidence given in the respective cases, Weldon was justly convicted, and Leary perhaps reasonably acquitted.

Mr. *Lysaght*.—I must beg leave to interrupt Mr. Attorney General. I conceive it is not regular to allude to past trials, even in statement.

Earl of *Clonmell*.—I never heard that it was carried farther than in a case, where Mr. Yorke declared, that nothing should be stated, which could not be given in evidence.

Mr. Attorney General.---My lord, I do not mean to urge any thing which is not regular; and upon the whole of the case, I conjure the gentlemen of the jury to discard every prejudice from their minds—to reject every thing which they have previously heard—and to rest their verdict solely upon the impression which will be produced by the evidence in court.

William Lawler,* sworn.—Examined by Mr. *Saurin*.

Said he went to London in the year 1791, where he worked at his business, which was that of a gilder;—became a member of the London Corresponding Society—their object was a radical reform in parliament—returned to Ireland about two years ago—had a letter of introduction from Daniel Isaac Eaton, a bookseller in London, to Mr. Archibald Hamilton Rowan, of Dublin—did not know the contents of the letter, but it was to introduce him to Mr. Rowan—did not

ask Eaton for the letter, but understood he corresponded with Rowan.—Witness upon his return to Ireland, became a member of a society—does not recollect the name—it was soon after dissolved, but was a republican society—gave the letter to a servant of Mr. Rowan's, two or three days after he arrived—does not know the street, it was the left hand of Britain-street—called in a few days, and saw Mr. Rowan himself—he gave witness a print of Thomas Paine.—Witness became acquainted with Burke, who was expelled the college, and Atkinson, the son of a watchmaker in Skinner-row, who told him Burke was collecting ten men, and desired witness to meet him at Galland's in Crane-lane—the Telegraphic Society afterwards met in Hoey's-court. Burke told him the plan was that he himself named ten, each of whom was to find ten others, and each of those were to find five—this would make a sufficient force to take the Castle of Dublin—one hundred were to be clothed in scarlet uniforms, to make the citizens believe the soldiers had joined them—witness made up his ten in a fortnight, and procured a room in High-street, where they met—they were called the Philanthropic Society. About a fortnight after the Fermanagh militia went to Lehanstown camp, witness became a Defender—was introduced to that society by Kennedy the prisoner at the bar, and Brady—they called at his lodgings on Sunday evening, and brought him to the horse-barrack, where he was to be sworn a Defender by Weldon, to whom witness was to pay a shilling, as he was a Committee-man—had known Brady and Kennedy before—they were members of the Philanthropic Society—had a conversation with them three weeks before about Defenders—they said there was a thing getting among the army, so that they could do without the societies—they said they were sworn by Hanlon, of the Fermanagh militia, and as Hanlon had gone to the camp, they would bring the witness to Weldon, whom they met at a public-house opposite the barrack-gate—they were joined by Clayton—Weldon said, "Had we not better make these two?" meaning Clayton and the witness—a prayer-book was produced, and Weldon pulled two papers out of his pocket, desired the witness and Clayton to lay their right hands on the book, and repeat after him, which was done—these are the papers. The next time witness saw these papers, was about eight days after Weldon left town, in the possession of Kennedy in Drury-lane—Murphy and Fay were with the witness—knew them to be Defenders, by their using the signs—Kennedy came out of his master's house into Drury-lane with these papers—witness challenged them, loud enough for all to hear—Kennedy allowed them to be the same papers. When Weldon swore them upon the test—he told them the signs by which they might know a Defender [Here the witness described the signs as before,

* "The general tenour of the witness's testimony upon this trial, corresponding with what he had given in the two former cases, induces the reporter to abridge it considerably, and to state it in the form of a narrative, rather than by question and answer, as has been done where it is set forth at large." *Orig. Edit.* See Lawler's examination on the Trials of Weldon and Leary, p. 251. and p. 302 of this Volume.

vide p. 355]. Weldon said Eliphismatis was a Latin word, but he did not know the meaning of it. He also said, "If the king's head were off to-morrow, they would be no longer under his government." Witness asked Weldon, was he not afraid to carry those papers about him—he said no, for he was never searched, and did not care who saw the large one, the small one was the principal, the other was only a test on account of swearing the soldiers. Brady asked if there was any one to head them? Weldon said there was one in the North, but did not mention his name. Kennedy asked how they would be informed? Weldon said there would be letters sent through the country to inform the Defenders when they were to rise. Brady asked how every one would know it? Weldon said, by the Committee-men—he would tell Brady when the next meeting would be held, that there would be one next week. Clayton and Kennedy then went away, the rest remained drinking punch—they were all sober; but Kennedy was obliged to go home, being an apprentice. [The witness then gave an account of the meeting in Plunket-street, precisely as in the former case, *vide pp. 356, 357*.]—The next meeting was at Stoney-batter, which was held for the purpose of going out to take arms. Hart swore a young man, and mentioned that their object was to assist the French [*Vide pp. 357 et seq.*]. This was sometime in the month of August. The next meeting was at Nowlan's, in Drury-lane, on Sunday the 23rd of August—a good many attended—Coffey was in the chair—he wanted to know how many Defenders were in Dublin, that they might have officers placed over them—it was agreed to meet on the Sunday following, when the Committee-men would report the numbers—Hart and the witness were called to order for talking together.—Hart told him—[this evidence was objected to and not admitted]—the day after he ceased to be a Defender, and gave information to Mr. Cowan, in Grafton-street—Witness's reason was on account of what he had heard from Hart, as to the designs of the Defenders;—heard there was to be a meeting at Crumlin, told Mr. Cowan of it, and also alderman James;—witness went there to delay them—they went to that place to be out of the way—the prisoner was not at Crumlin—witness told the alderman he would be there, and knew he himself was to be taken with the rest—told alderman James that the papers upon which witness was sworn by Weldon, were in Kennedy's fob—saw them at a meeting at Dry's in Cork-street, on the 23rd of August, when they were produced by Kennedy, who took them from his fob, and asked if Lewis was not a proper person to be sworn a Defender?—was answered by Dry, he was—Coffey produced the prayer-book—Kennedy laid the papers upon Coffey's bed, which was strapped up like a trunk—there were three papers—Kennedy said he had written one

himself, for there was one of Weldon's which he did not like—witness paid no attention to the third paper;—after Lewis was sworn, Kennedy put the papers into his fob again—Lewis called on witness the same day after dinner—they went to the Philanthropic Society, which usually met at Dry's in Cork-street—it was to meet that evening at five o'clock—the meeting at Nowlan's was to be at six—Lewis was sworn before they went to Nowlan's—saw the papers with Kennedy at Dry's, but not at Nowlan's—when he read the papers, he read—gs kings.

[The two papers were then read, for which *vide* indictment.]

Cross-examined by Mr. M'Nally.

Was brought up in the Protestant religion—his father and mother were Protestants—knows that every true Protestant believes in the Trinity—went with the Methodists before he went to England, but did not then deny the Protestant religion—sometimes went to church, sometimes to chapel—continued a Methodist after his return to Ireland—has read the 1st and 2nd parts of Paine's Rights of Man, but never read his Age of Reason—always believed in God, and a future state, but Burke wanted to persuade him to believe there was no Saviour, and that he was a false prophet;—Burke gave him a little book written by himself, and signed with his name, in support of his doctrine—it shook witness in his belief, but he was since convinced of his error, and was sorry for it—had done many things before which were wrong.—Witness asked the chairmen, at the corner of the street, what number Rowan lived at—the name of the street was on the back of the letter—Eaton told him, he mentioned him in the letter to Rowan—never was charged with bringing a false letter to Rowan—there was a false name in the letter to Rowan, for witness went by the name of Wright in London, and that must have been the name in the letter—when witness told Rowan his name, where he lived, and of the Corresponding Society, Rowan did not ask him to come again—he gave witness some printed papers, does not recollect exactly what they were—never was charged with being a thief—it was said he took a frame from Mr. Robinson's, but another person afterwards told him he knew who stole it—Rowan asked him about the society in London and the militia, and about forming a society here—this passed in Newgate—one Strephon, who came to witness, mentioned a wish, that there should be a society formed here like the London Corresponding Society—witness advised an application to Rowan, who approved of it, but desired them to be cautious, as they saw what a scrape he had got into—the reason he changed his name was on account of his having enlisted, and deserted—does not exactly recollect what he swore when he was attested—was not then a

member of any society—after he deserted. he became a member of the London Corresponding Society, went publicly there, and being but little known, thought there was no danger of his being apprehended, particularly as he had changed his name—belonged to the 16th division of the Corresponding Society—believes he was guilty of a breach of his oath, when he deserted, is sorry for it—he collected ten members for the Philanthropic Society, they were sworn not to withdraw from the society, nor divulge their secrets—did not upon any former occasion swear in evidence that the oath was, not to give evidence against each other—hopes he will be pardoned for all his offences, but cannot hope for reward, as nothing had been promised him—made no objection to Weldon's oath, nor was he shocked at the supposition of the king's head being cut off—he did not then think it a criminal act—one of their members had been arrested and lodged in a watch-house—they went to take him out, there was a shot fired—is not bound to tell who fired the shot—after a meeting in Stoneybatter with Fay and Kennedy the prisoner and some others, they had a talk of a design to attack the chancellor in the course of the winter, as he returned from the House of Lords, and to hang him from one of the trees in Stephen's-green—did not mention this in his information to alderman James, but intended to have mentioned it to him; it might not have come out now had not counsel desired him to tell all the treasons he knew of—does not know who threw the stone at the chancellor, nor did he see it thrown—told alderman James the reason he became a Defender was, to know what they were about—agreed with them in every thing, but what he heard Hart say—has been kept in close custody in the Castle for three months for the purpose of giving evidence against the prisoners—Burke was the principal person, who led him astray in religious matters—Mr. Cowan advised him to give information—was standing in Dame-street the day lord Camden arrived here—was also in the Castle-yard that day—never threw a stone at the chancellor, nor heard of a stone being to be thrown, till after it was thrown—does not recollect any reason he had for going home early the evening the stone was thrown—was called on and went out with the party to confine Cockayne—were prevented by his not being at Mrs. Jackson's—Le Blanc said if Cockayne was put to death, what he had sworn would stand good;—witness had a pistol when he was in the watch-house—there was a pistol fired, it had a ball in it—was present at the attack upon a house the corner of Bull-alley, in going home—had pistols about him, but does not know whether he had charged them or not—it was a crimping-house;—believes the oath was written by Hanlon, the Fermanagh militiaman.

Mr. Alderman James sworn.—Examined by Mr. Solicitor General.

Lawler came to him with Mr. Cowan, about the 26th of August, and lodged informations. His evidence upon the former trials and the present, corresponded with the account he then gave, except as to the design upon the chancellor. The alderman issued warrants against several persons in consequence of the informations, and he desired Mr. Carleton, the chief constable, to be particular in examining Kennedy's fob, for Lawler said the oath would be found there—took Lawler's examinations the first time he saw him—no examinations had been lodged against Lawler at that time, nor did the alderman ever issue a warrant for his apprehension, but issued warrants against many other persons upon his informations.

Cross-examined by Mr. Lysaght.

Lawler did not disclose the circumstance respecting the chancellor—The alderman thought it his duty to find out every thing—cannot say that Lawler intentionally withheld it—he did not disclose the circumstance of his enlisting or deserting, or that he had fired a shot into the watch-house.—He was examined after dinner, about eight o'clock—no warrant was issued to apprehend him, but he was taken at the house of one Toole in Crumlin, in consequence of his information that he would be there.

Oliver Carleton, esq. sworn.—Examined by Mr. Ruston.

Was high constable of police in August last—received warrants from alderman James against Kennedy, the prisoner, and Brady, in consequence of which he went to Stephen-street, between four and five in the morning of the 27th of August—rapped very loud at the door, two persons came to a gate and opened it—he asked their names, they answered Kennedy and Brady—he took them into custody, and agreeable to the directions he had received, was particular in searching Kennedy's fob, in which he found the oath and catechism—[they were here shown to the witness, and he identified them from the initials of his name.].

Cross-examined by Mr. M'Nally.

He asked Kennedy how the papers came there, and what was the use of them?—He made no answer.

[Case rested for the crown.]

DEFENCE.

Mr. M'Nally.—My lords, and gentlemen of the jury, I am of counsel in this case with my learned friend, Mr. Lysaght; and it therefore becomes my duty to call your attention to the defence of the unfortunate young boy, who stands a prisoner at the bar of the court, ar-

raigned for high treason. Gentlemen, I apply to him the epithet of unfortunate, not because the evidence that has been given against him, can, in my humble opinion, impress your minds with a conception of his being guilty, but because any subject of the crown, standing in his situation, standing in that dock, and before this tribunal accused of the most heinous offence the law recognizes, and punishable by the most cruel sentence the law knows, must be considered as unfortunate, however conscious of his own innocence. Gentlemen, I address you on the part of this unfortunate youth, under the influence of that reverential awe which always influences my mind when calling for the attention of a jury of your description. A jury which I am convinced, from my personal knowledge of some of you, and from the general character of you all, is composed of wise and intelligent men; men who are well acquainted with the principles of those laws under which we live, and by which the lowest of us are protected, and fully adequate to the honest discharge of that high and respectable, I was going to say paramount office, which they fill. In addressing you, gentlemen, I must of course, feel for my own deficiency; but I find consolation from this reflection; that you, actuated by the principles of mercy, while guided by the rules of law and justice, will contribute every aid to such observations as I shall submit to your deliberation. Gentlemen, every man who admires and loves the constitution of his country (and every man who is not either a knave, a fool, a lunatic, or an infant, must admire its system), I say every man who loves and admires the system of our constitution, must look up to juries as the legal guardians, protectors, and conservators of the lives, the liberties and the properties of the people. I consider a jury as a political citadel, placed in the centre of the constitution—a citadel where liberty has often planted her standard, and where she must always make an effectual stand against oppression and tyranny, unless betrayed by those whose sacred duty it is to protect her.

Gentlemen, it is necessary that I should make a few observations to you on what has fallen from Mr. Attorney General in stating the case for the crown; and my leading observation is, that the learned gentleman, in the discharge of his official duty, has this day, in the most honourable and candid manner, stated the case against the prisoner, without an attempt to aggravate or colour the charge; and I doubt not but those other learned counsel for the prosecution, whose duty calls upon them to follow Mr. Attorney General, will adopt the same manly and humane conduct.

I beg leave, gentlemen of the jury, to remind you of the excellent caution urged with warmth and with clemency, by the attorney-general. He cautioned you against acting under prejudices resulting from extrinsic

causes. His advice was just, legal and wise. A juror should divest his mind of all extrinsic matters; he should come into that box pure, unsullied and unbiassed as an infant entering into life; the evidence given in court should be the only object of his deliberation. On the evidence sworn to in court, and that evidence only, he is bound in conscience, by his oath, to form his verdict: for what is his oath? He is sworn on the testament of his faith, that he will well and truly try, and a true deliverance make between his sovereign the king and the prisoner, *according to evidence*. For this reason, gentlemen, if French politics or French depredations be stated, you will consider them as extraneous to the matter in issue; and for this reason, should the counsel for the crown attempt to engage your passions by adverting to the distracted state of this or that country, you will expunge such statement from your recollection. For you are not sworn to give a verdict upon the state of France, or upon the state of Ireland, but truly to try upon the evidence, given to you upon oath, whether the prisoner be guilty or not guilty of the crimes of high treason, charged upon him by the indictment. The attorney general has adverted to the public newspapers, and has stated to you that through their medium pains had been taken to influence the public mind, in respect to the trials for treason, now prosecuting by government. Gentlemen, I do think with Mr. Attorney General, that animadversions on legal proceedings while they are pending, is an offence: but if Mr. Attorney General has read all the public papers, he must know that such animadversions have not been confined to papers of any particular political description: for in those papers denominated court prints, the writers of them have not only traduced those who have appeared as witnesses for the prisoner, but those employed as their counsel. In one of those morning prints, I have been noticed with censure, and the character* with whom I had the honour to act on the trial at the last commission, a character as great and eminent for genius as ever appeared at this or any bar, has been calumniated for exerting his paramount abilities in defence of his client. But, gentlemen, I am satisfied that whatever you have heard, or whatever you have read relative to the subject now before you, you will obliterate from your memories, confining your deliberations solely to the evidence given in open court.

Mr. Attorney General has spoken of the necessity of making an example—in my humble opinion this was not a subject to be addressed to you; for gentlemen, it is not your province to make examples, that last and distressing duty, founded in necessity, belongs to another tribunal. Your duty is to hear the evidence, and on the credit you give to that evidence to acquit or convict; and I trust

* Mr. Curran.

from the nature of the evidence, acquittal will this day mark your verdict—and that the prisoner will not be found a subject for example.

There are, gentlemen, but two leading features in this case to which I shall call your attention.

First, Mr. Lawler, the principal witness produced on the table; and secondly the evidence given by that witness. As to the witness, though he does not come under the legal description of an approver, as on a former occasion was stated by the Bench, yet it clearly appears from his own confessions, that he has been a *particeps criminis*, in a catalogue of offences as vile and black as ever stained a human heart, or disgraced the character of a man; therefore he comes before you, gentlemen of the jury, in at least a questionable shape, and within that rule of law and legal evidence, that has been laid down by one of the wisest, and what was more to his honour, one of the most humane judges that ever presided in an English court of justice—I allude, gentlemen, to that celebrated jurist, whose noble and independent conduct deservedly procured him the title of the “great lord Hale.”—What are the words of that great man upon approvers? I will tell you, gentlemen, his opinion upon such witnesses. Lord Hale says, “though an approver be admissible as a witness in law, yet, the credibility of his testimony is to be left to the jury, and truly it would be hard to take away the life of a person upon the evidence of such a witness, that swears to save his own; and yet confesseth himself guilty of so great a crime—unless there be very considerable circumstances, which may give greater credit to what he swears.”—This opinion will be found in Hale’s *Pleas of the Crown*, p. 305.—Gentlemen, it will be for you to consider whether the witness, Lawler, come within the description given by the great and good lord Hale—and it will also be for you to consider that lord Hale is here speaking of a witness implicated only in the offence he is called to prove, coming forward charged only with one crime; but what would the learned and benevolent lord Hale have said, if he had been speaking of such a witness as Lawler? If he had been speaking of a *particeps criminis*, who had declared he had taken the oath of allegiance, as a soldier and a subject, and had violated that oath? If he had been speaking of an iniquitous man, against whom it had been proved, that he had denied the existence of the persons of the Trinity? If he had been speaking of a man who had administered oaths to seduce and delude youths, had sworn them never to prosecute Defenders, and had then come forward and prosecuted them himself? If he had been speaking of a man who had united with conspirators to assassinate a witness? If he had been speaking of a man who had confessed, there was a time when he did not think it a crime to take off the head of his sacred majesty, and destroy the govern-

ment?—I add, destroy the government, because the existence of the constitution and government of this country depends upon the existence of the king—A man who, when the question was put could not deny, and therefore refused to answer, that he once fired a charged pistol into a watch-house, with intent to commit murder; and that there was a time, and that recent, when he did not consider it a crime to lie in wait for the purpose of seizing and hanging no less a person than the lord high chancellor of Ireland.—’Tis true, gentlemen, Mr. Lawler is by his own account a repentant sinner, for he has told you, he hopes to obtain forgiveness from government and from God. He has now told you how long repentance has dawned upon him; but if he has repented, how does the sincerity of his contrition appear?—Does it appear as it ought?—Does it appear he has made a full confession of all his offences?—No, for it appears that he suppressed the whole of the intended assassination of the lord chancellor, and the intended assassination of Cockayne, when he gave in his information on oath to alderman James.—Alderman James I presume, admonished him, and swore him to tell the truth, and he suppressed the truth. I admit, gentlemen, that necessity, on particular occasions, justifies the admission of such witnesses as Mr. Lawler, otherwise, if that was not the case, the most atrocious offences would often escape with impunity; but permit me, gentlemen, to advert to the great lord Hale, and on his authority to observe, that even in such cases, there must be strong corroborating circumstances to give credence to the man who, even voluntarily, comes forward to save his own life, by the sacrificing the life of another.

Gentlemen, the papers found on the prisoner and produced in evidence to support this prosecution, will probably be held up to you, and expatiated on by the counsel for the crown, as strong corroborating circumstances.—But you must have remarked, that no evidence was given by Lawler to show that these papers are the identical papers that were in the possession of Weldon: of course it does not appear to you that those papers were ever appropriated to any use, or ever published in any manner by the prisoner; and, gentlemen, the court will concur with me in this rule of law, that the possession of papers without a publication, however seditious their contents may be, however treasonable their tendency, does not amount to high treason, for the mere possession of treasonable papers does not amount to an overt act. God forbid it should, for, if that was the case, no man would be safe;—the false friend, the bribed servant, the suborned guest, every spy that came into a man’s house, would have it in his power, by privately depositing a private paper, to bring his innocent intimate, master, or host to condign punishment. Gentlemen, a very melancholy case once occurred in England,

which very fully illustrates this position. It is a case well known to the learned judges on the bench; and, indeed, I believe of general notoriety. I mean the case of Salmon, Gahagan, and other miscreants, who, in consequence of large rewards, offered by act of parliament for the apprehension and conviction of foot-pad robbers, entered into a conspiracy to obtain rewards, by falsely accusing innocent young men.* Gentlemen, they accomplished their diabolical scheme, by insinuating themselves into the confidence of unsuspecting and unwary youths, and then putting marked coin, or other articles into their pockets, by which they fabricated evidence to satisfy a jury, convicted the dupes of their villany, and pocketed the parliamentary remuneration of their wickedness. They were at last discovered, and justice cut asunder this gordian knot of treachery. They were indicted for murder, but the law could not reach their lives—they were indicted and convicted of conspiracy; they were set in the pillory and the enraged populace pelted out the brains of two of them.† Does Lawler appear a man incapable of such a villainous scheme? Is it improbable that he, with a hope of pardon and reward before him, possessing the confidence of the prisoner and having given information to the magistrate, contrived by some subtle stratagem to convey these papers to the possession of the prisoner, for the very purpose of using them afterwards in corroboration of his own testimony? Gentlemen, there is one circumstance that strengthens this position, it is this; you must recollect that Lawler swore his reason for getting among the Defenders was for the purpose of coming at what they were about; but will you believe that to be the fact?—If mere curiosity was his motive, why did he not secede from the societies when he did become acquainted with the purposes of their association?—He must have had a motive, and that motive must have been to betray—he must have been sent in, or he went into the societies for that purpose. You cannot for a moment suppose, that the wretch who has confessed, he would at one time have thought it no offence to take off the head of his anointed sovereign, could at any time feel compunction at murdering his majesty's subjects. Gentlemen, when you come to examine the evidence of this man, inquire among yourselves whether he has in any material point contradicted himself. For it is an established rule, that if a witness contradict himself in any material part of his evidence, it discredits the whole; and so far has this wise and salutary doctrine of evidence been carried, that Lord Mansfield extending the rule to civil causes, has on trials where one witness has given false testimony, though there were other witnesses

of unimpeached characters examined to the same points with the prejudiced party, directed the jury to reject the whole of the evidence, and find a verdict against the party producing such a witness.

Mr. Lawler's character is fully before you and in your possession; and permit me to ask you, has your knowledge of it raised a doubt in your mind? for if it has raised a doubt, you are bound by the imperative dictate of conscience, to acquit the prisoner. You are bound, I say, not to convict, unless his testimony be irresistible; and when you take into your consideration, that only one witness has been produced to the merits, I rest satisfied, that you will send this unhappy youth at the bar home to his parents, where his errors may be corrected and his mind improved, and not by a verdict of guilty deprive him of his life, under the infliction of a judgment the most severe that the laws of this country, or perhaps of any other country, has adopted. I here conclude. We will now call witnesses to show you and the court, that Lawler is a person of such infamous morals and holding such impious principles in point of religion, that he ought not to be credited on oath, giving testimony in a court of justice; and then I rest satisfied, you will reject his evidence as being unworthy of credence, and give life and liberty to my client, by a verdict of not guilty.

Samuel Galland sworn.—Examined by Mr. Lysaght

Lives at No. 2, Crane-lane, is a grocer, has known Lawler for four or five years, and does not think him a man to be believed upon his oath.

Cross-examined by Mr. Solicitor General.

Witness was once a hair-dresser, and has a brother who has travelled to New-York, last September, since these people have been taken up; there were fourteen or fifteen of them in a reading society for the information of themselves; no books were bought while witness was in the society; they all gave what books they had for the use of the society. His brother went to New-York, to follow his trade as an engraver, and has been talking of going there these three years. Witness never was in the Philanthropic society, but believes his brother was—witness expressed a concern for Lawler, when he heard he was taken up—did not hear of his being taken for a week after he was taken—witness pitied him, as being accused of *Defenderism*—expressed his sorrow and surprise at it, as he thought him incapable of such a crime; they used to read the papers of the day at the society, Goldsmith's *Animated Nature*, Pope's Works, Chambers's Dictionary, &c.—thought Lawler an innocent lad; but from witness's knowledge of his religious principles, would not believe him on his oath—witness and Lawler were both Protestants—does not know where the persons are who

* See the trial of Macdaniel and others *ante* Vol. 19, p. 745.

† See Vol. 19, p. 809.

composed the club—believes Burke ran away—would not believe him either on account of his principles—never knew any of the Philanthropic society, but his brother, as he himself was not a member—never heard of Strephon's religion—never expressed his opinion, or wish for a reform. [The witness declined to answer, whether he had ever expressed any opinion upon government]—witness is about 24 years of age, and never went to any other reading society for instructions since he went to school.

Nicholas Clare sworn.—Examined by Mr. *M'Nally*.

Is a master taylor, lives at 39, Townsend-street, knows Lawler 16 months—would not believe him on his oath—witness belonged to a reading society with him, and one evening Paine's Age of Reason was spoke of—Lawler said he would go farther than Paine, for he denied any part of the Trinity.

Cross-examined by Mr. *Saurin*.

Does not know who had him admitted, nor any of the persons there, but Lawler and Galland—has heard that the taking up of the prisoners was the cause of Galland's going off—witness's reason for not knowing more of the society was, that he seldom went there—did not go above four times—never saw any of the persons accused of high treason, until he saw them in court—believes he brought his brother into the society—was acquainted with one Cox—witness believes he brought him into the society—never knew that Lawler was called to account for any offence in a court of justice—witness quit the society on account of Lawler's conduct, and advised his brother to quit it.

John Clare sworn.—Examined by Mr. *Lysaght*.

Was a member of the society, knew Lawler, and was acquainted with his general character,—would not believe him on account of his abandoned behaviour, and denying a future state—would not take away the life of a fly upon his testimony.

Cross-examined by Mr. *Kells*.

Is a taylor, was a member of the society six months—the greatest number he ever saw there was 24—Galland, Atkinson, Cox, Burke, Lawler, witness's brother were among the number—it was intended for information; sometimes they had a law question—witness hoped to be a magistrate some time, and liked a law question—they had the news of the day also, upon which they used to argue—Burke and Lawler were for the Age of Reason being introduced—witness is a married man, 36 years of age, never was at such a place till about 3 years ago—they went to have a French master to teach them French—Lawler's getting his hand cut in a riot, was the reason witness left the society—Lawler

was an impious man—never heard why Atkinson went to America, except it was to better himself—nor why Galland went—believes they went together last September—never heard that counsellor Barrington took Atkinson.

William Ebbs sworn.—Examined by Mr. *M'Nally*.

Is a pewterer—has known Lawler some time—he and his wife lodged in witness's house—Does not think he is a man to be believed upon his oath—he is a man of very irreligious principles—worked on Sundays, and did not go to any place of worship.

Cross-examined by Mr. *Ruxton*.

Lawler lodged some time in witness's house, paid his rent, and was an industrious, regular man—did express a concern at hearing he was taken up, for he was an industrious man—his wife was much alarmed, and hid something in the dirt hole—witness searched and found two bags of musket-balls—he also found a sledge—thought these must have been intended for some wicked purpose, and wished to get rid of him—these, coupled with the other circumstances, induce witness not to believe Lawler—never offered to go security for him, but said he was an honest man.

John Robinson sworn.—Examined by Mr. *Lysaght*.

Lawler served part of his apprenticeship to the witness—was a bad boy—that is 12 years since, and witness could not take upon him now to say whether he was to be believed upon his oath.

Cornelius Gautier (one of the jury) sworn.—Examined by Mr. *M'Nally*.

Was one of the jury upon Leary's trial—does not recollect particularly what Lawler swore upon that trial.

Samuel Tyndall (another of the jury) sworn.—Examined by Mr. *Lysaght*.

Was one of the jury upon Leary's trial—recollects that Lawler then swore, that Mr. Robinson had beaten him, for which he ran away,—that was the only reason as he recollects—Lawler said, he was accused of stealing something from Mr. Robinson.

Mr. *Lysaght*—My Lords, and Gentlemen of the Jury;—it is my duty to place the best shield I can between the unfortunate youth at the bar, and an ignominious and untimely death; and if my conception of the law applicable to this case, be just, I feel a strong hope of being able to convince both the Court and the Jury, that the prisoner is guiltless of the crime with which he stands charged; I say emphatically *with which he stands charged*; for should you, gentlemen of the jury, squander much credu-

lity on the testimony that has been adduced, still, if you do not give entire credence to the evidence of Lawler, the prisoner, however incorrect, or if you will criminal, if his crime falls short of high treason, you are bound to acquit.

The specific treasons charged against him are, the compassing and imagining the death of the king, and adhering to the king's enemies. I shall not deny, that an adherence to the king's enemies is a substantive treason, and may be also laid as an overt act, which it unquestionably is, of conspiring and imagining the death of the king; but I, with respect for the Court, insist on it, that the barely having in one's possession *without publication* a paper containing favourable sentiments and wishes towards an enemy in a distant country, without any communication or correspondence whatsoever with the enemy; I say such a circumstance cannot, on any principle of law, of authority, or of precedent, that I know—I say such a circumstance cannot be swelled up to the enormity of high treason. I also contend, and I am supported by Hale and Foster, that a bare conspiracy to levy war for lawless purposes, short of deposing or dethroning the king, or in any degree endangering his sacred life, is not high treason, nor an overt act to manifest the compassing his death.

Having said so much on the law of treason, so far as it could be supposed to bear on the present case, I shall have but little to add to the observations which have been so forcibly urged by Mr. McNally, on the evidence of Lawler, contaminated and damned as his credit must be, from his avowed perjuries, intended assassinations and felonies; so totally divested, as he has been proved to be, of that sense of religion, without which no man can regard the sanction of an oath—it would, I am confident, be a waste of time to the Court to argue that his testimony must be thrown out of your consideration. What then is to affect the prisoner's life? Is it the unpublished nonsense found on him? Now, gentlemen of the jury, as to the declaration, the words of it are, "I, A. B. of my own good will and consent, do swear that I will be true to his majesty king George the third, whilst I live under the same government."—Surely, gentlemen of the jury, "while I live under his government," may have been understood by the youth at the bar, to have meant the duration of his own life—there is no innuendo laid in the indictment to eke out a criminal construction of this declaration; there is nothing necessarily to be inferred from it in law, in logic, or in reason, to charge the prisoner with treason, or even with sedition.

Gentlemen of the jury, as to the catechism, I own I cannot say so much, but as it was never published by the prisoner, he might, as judge Blackstone says, "keep poison in his closet," so that he did not vend or disperse it. This catechism may be considered as sedi-

tious; yet courts and juries should be cautious, how criminal interpretations should be given to words in themselves dubious. In *Fleta* it is laid down, that formerly in appeals for treason, the appellant was obliged to prove with the most critical accuracy and perspicuity, the words and writing imputed, their clear meaning and import, beyond doubt or question, and if he failed in doing so, the appellee was discharged and cleared of the imputed treason. —But, gentlemen of the jury, I hold in my hand high authority to show—authority not expressly stating, but by fair and almost necessary implication admitting,—that even the administering unlawful oaths and engagements, is not considered to amount to high treason.—Defenders now are what White-boys formerly were, and the act of the 37th of the king, was needless and nugatory, if the crimes provided against by it amounted to treason; [here Mr. Lysaght read extracts from the acts alluded to, to support his argument; and contended, that by this statute he was impowered to assert that the king, lords and commons of Ireland allowed impliedly, that the statute of treasons could not legally operate against Defenderism.]—But the prosecutions of the present day, though for the same offences, were to vary from the prosecutions heretofore carried on against White-boys and Right-boys as they were then called, and Defenders as they are now called. Why? because a general alarm was spread through these kingdoms, and many good and wise men were infected with it.—How else account for the late prosecutions in England, the result of which was the acquittal of all accused, and the ascertaining that one of the supposed traitors, Horne Tooke,* was a gentleman of the soundest and most pure principles, of unshaken patriotism, and loyalty! as was manifested by the evidence.—My lords, I ask what precedent can be adduced to support the position, that the having a paper of any kind in one's possession without publication, can be high treason?

Hensey† had sent forth his letter, it was intercepted, but it had gone from him with intent that it should reach the enemy.—Is there in the case before you, and on which give me leave to say posterity will comment, is there the shadow of evidence even from the infamous and solitary witness Lawler, that any communication or correspondence with the enemy was had or intended?—must not the *intention* be guilty?—Was Rabelais put to death for having—It is too solemn an occasion to throw out such allusions, if they be not relevant—was Rabelais put to death, even under a despotic government, for writing labels on phials full of brick dust, "poison for the king, poison for the queen, &c.?" No, because no treasonable intention could be proved against him. And will the Court and

* See his Trial, *antè* Vol. 25, p. 1.

† See his case, *antè*, Vol. 19, p. 1341.

jury in this case say, without credible proof, that Eliphismatis, and such trash of enigmatical or rather nonsensical import—and certainly not credibly proved to be of treasonable import—is an overt act of adhering to the king's enemies?—Where are his enemies? where I hope they ever shall be, *distant*.—How did the prisoner *adhere*?—Did he *correspond* with, did he *send intelligence* to?—Does the very indictment charge that he adhered in any manner, except to use its language, *in case* the French should land.—I have heard of constructive treasons—here are eventual, contingent treasons—blundering accusation! Gentlemen of the jury, will you disgrace your country and yourselves?—I hope not—I have for myself to lament, that I have been assigned as counsel for the prisoner but this day, in the place of that able advocate, Mr. Curran, who could not attend;—but I confide in the wisdom and integrity of the Court and Jury.

Mr. Lysaght concluded by conjuring the Court not to put too heavy a weapon into the hands of justice, by multiplying treasons; and to the jury to reflect on the infamy of Lawler, and the youth of the prisoner.—Do not, gentlemen of the jury, suffer your consciences to be biassed by interest or by prejudice, or your judgment to be shaken by alarm. Do not superstitiously imagine, that the poor youth at the bar is so unhallowed and full of guilt, that the safety of the state vessel requires that he should be thrown over and perish.

Mr. *Prime Sergeant*.—My lords, and gentlemen of the jury. It is with no small pain that I rise upon this occasion, to perform the disagreeable task which my duty requires. No man can feel more sincere compassion than I do for the unfortunate youth at the bar, and no man would feel more happy at his being able to establish his innocence to the satisfaction of the jury. But, gentlemen, justice imposes an indispensable duty upon me, and while I am ready, with the greatest candour, to allow the unhappy prisoner every advantage which the ingenuity of his counsel could suggest upon the facts adduced in evidence; yet, gentlemen, I must, in advertising to that evidence, be obliged to show it in a very different light indeed, from that in which it has been exhibited by the prisoner's counsel. I shall be obliged to demonstrate to you, that the facts proved, do fully support the charge of high treason, agreeably to the construction of the statute of treasons, as laid down by the learned gentleman who stated the case on the part of the crown.

Much has been said, gentlemen, with respect to the testimony of Lawler; it has been violently arraigned by the prisoner's counsel. But, gentlemen, I must deny it is that species of evidence which it has been called; namely, the evidence of an approver swearing to save his own life—for here, gentlemen, no promise of reward ever appeared or existed. Lawler had not been apprehended, he was not in cus-

tody, he was not even charged with any crime; and he appears to have acted solely from motives of compunction. Gentlemen, suppose a man had been at one period of his life of abandoned or dissolute principles, was no room ever to be left for repentance, or amendment? If the witness had no scruples of conscience, by listening to which, he hoped to make some atonement to his country, for the mischief he was promoting, by stopping its current before it overwhelmed the country; if, gentlemen, the witness were afraid merely of personal mischief, he might have withdrawn from the scene; he was at perfect liberty to do so. No person accused him, he was not even suspected, save by his accomplices; he could have fled to America or elsewhere, but his testimony has been perfectly consistent throughout the trial, as it has been during the former ones. What was his account? he told you he was appalled with horror at hearing the real intention of the Defenders, which he was unacquainted with before; he therefore determined to abandon them, and if possible, to prevent the completion of their diabolical purposes. He disclosed the matter to Mr. Cowan, who advised him to lodge informations, which he accordingly did; and it appears he did so voluntarily, without any apprehension of prosecution, or promise of reward.

Gentlemen, the circumstance of being a Defender, is of itself a strong impeachment upon the moral character of a man. But will it be pretended that it altogether precludes his testimony, where he could have had no necessity for coming forward, no fear of punishment, no promise of reward, no apparent object, but what he told you himself, the prevention of public calamity and general mischief? If such testimony were rejected by the law, the secrets of conspirators never could be developed, particularly, where they had skreened their intentions and designs from the prying eye of justice, by the most solemn engagements of privacy. Gentlemen, how are such offenders to be brought to punishment?—You cannot expect that men of respectable character could be acquainted with such schemes, or able to give evidence of them. The law only requires that the best evidence which the case admits of shall be given. Lawler was certainly a *particeps criminis* with the rest of the party, but when he came acquainted with the monstrous extent of their designs and the diabolical plans in agitation, he became appalled with horror, and only obeyed the dictate of his conscience in discovering the plot. Thus, gentlemen, he has been made the providential instrument of frustrating this diabolical project, which if left undiscovered for a few weeks longer would have prevented the possibility of a jury, sitting in that box this day, to discharge the most inestimable privilege of our happy constitution.

But, gentlemen, it has been said that the

testimony of Lawler is unsupported—it is no such thing?—It has been consistent and circumstantial, as well now as upon the former trials.—His testimony is uncontradicted—not a single witness has been adduced to contradict any one fact stated to have passed at any of the various meetings, at different places, and at different times. He has uniformly told the same story, except as to the design upon the chancellor, which was brought out upon the cross-examination, and in every point where the magistrates and the officers of justice have been concerned, his testimony is fully corroborated down to the finding of the same identical oath and catechism in the sob of the prisoner. The ingenuity of the prisoner's counsel in the course of a very long cross-examination, has not been able to warp the witness into the slightest prevarication, and no attempt has been made to prove the contrary of what he has related. He has given the prisoner ample opportunity of doing that, if it were in his power, by mentioning the places where they met.—It has not been attempted. But, gentlemen, it is said, that Lawler's testimony was rejected and disbelieved by a former jury.—That, gentlemen, I cannot admit to be the fact; for it might be perfectly consistent for the very same jury to acquit Leary upon the evidence given against him by Lawler, and to find the prisoner now at the bar guilty upon the evidence of the same witness. The jury in the former case, might have had some doubt as to the criminality of the man—it did not appear *positively* that he was present when any oath was administered, and if the jury had any scruples in their minds, so as not to be perfectly satisfied of his guilt, it was their duty to acquit. But, gentlemen, what room is there for doubt in the present case? The actual administration of the oath has been proved, and that very same oath has been found in the prisoner's possession.

Mr. Prime Sergeant then commented very fully upon the facts given in evidence, the treasonable nature of the oath, and the zealous activity of the prisoner, from which he inferred that no doubt could remain of his guilt. But, however, if, notwithstanding, they had any reasonable doubt, such as rational men could entertain, it would be their duty to acquit the prisoner.

SUMMING UP.

Earl of *Clonmel*.—Gentlemen of the Jury; If I felt the smallest difficulty upon the whole of the merits of this case, in proceeding to deliver my opinion upon it forthwith, I would adjourn the Court for a short time, or until the next day, in order to take time to consider of it; but, gentlemen, I do not feel any such difficulty; such adjournments, indeed, have taken place in another country,* but it is a precedent which I must confess, I do not much

approve; and in presiding upon criminal trials, I will never, so long as I am able to sit, and my brother judges are able to assist me, adjourn the Court, until the issue be finally disposed of.

Gentlemen, the indictment which you are now to try is founded upon the statute of Edward 3rd—a statute which has been enjoyed by the happy constitution of these realms for seven hundred years, and which, for one hundred years past it has not been necessary to call into execution in this kingdom. Gentlemen, it may be necessary to state to you, what the accusation is not, in order to disembarass your minds from the representation of counsel. This is not a charge of felony, under the White-boy act—it is not a charge for levying war to pull down enclosures—it is not a charge against the prisoner for having in his possession unpublished papers—it is not a charge for a tumultuous rising, or of merely assembling with Defenders to commit robbery or burglary—it is not a charge of merely taking, or administering illegal oaths—but, gentlemen, it is an indictment of high treason, founded in the statute of Edward 3rd, and it charges the prisoner with associating himself with divers *false traitors*, styling themselves Defenders, and combining and conspiring with them to aid and assist the persons exercising the powers of government in France, at open war with the king, for the purpose of overturning, by force, the king's government in this country, in church and state, thereby adhering to the king's enemies, and compassing and imagining the king's death. For, gentlemen, it has been truly stated by the learned officer of the crown who opened the case for the prosecution, that any adherence to the king's enemies at open war with his majesty, for the purpose of aiding or assisting them against his majesty, necessarily, in its obvious consequences involves the safety of the king's life and the existence of his government. Consequently, gentlemen, he who is guilty of the one is, by necessary implication, guilty of the other. Therefore it is not necessary that there should be a direct attack upon the king's person, or an actual levy of troops to carry on rebellion, in order to support this indictment; for if a combination, or conspiracy for the purpose, existed amongst his majesty's subjects, and if it can be established by overt acts committed by them, the charge will be thereby as fully substantiated as if the most malicious purpose of such a conspiracy had been perpetrated and completed. Gentlemen, the safety of the state and the constitution itself, is inseparably connected with the safety of the king, who is the first soldier and the first magistrate of the state, and therefore the law, wisely considering the importance of his invaluable life to the peace and existence of society, has guarded even the most distant approaches towards the safety of that life, with the most scrupulous caution; for, gentlemen,

* See the case of Crossfield, *antè*, p. 91.

this is the only instance in which the policy of our laws takes the intention of guilt, manifested by plain, unequivocal overt acts, as adequate to the completion of the crime, and inflicts the punishment accordingly for such criminal intention. Having thus stated the law arising upon the case, as far as it occurs to me to be necessary, I shall next proceed to consider the charges stated in this indictment, and the evidence which has been adduced in support of them.

[Here his lordship stated the overt acts enumerated in the indictment, and then recapitulated, from his notes, the whole of the evidence.]

His lordship afterwards stated it as his opinion, that all the circumstances separately and collectively considered, showed that a connexion with, and adherence to the French Convention, was the unquestionable purpose of De-fenderism, for the end of assisting the French in any invasion of this country, and overturning the government of it; and the guilt of these designs, if the jury believed the testimony of Lawler, was clearly brought home to the prisoner at the bar. Gentlemen, the next object for your consideration will be, the evidence of that witness. How does it appear?—Certainly, not as that of an approver, as has been represented by the counsel; he stands upon very different grounds. An approver, gentlemen, is a man who, upon being apprehended and charged with a crime, was encouraged by the offer of a pardon, to disclose his crime and prosecute his accomplices. Gentlemen, is that the case of Lawler?—Certainly not. Was he apprehended upon a charge of any crime?—No. Was he offered a pardon?—No. Did he prosecute his accomplices out of a necessity to save his own life?—No. Was there any thing to prevent his escape from justice, if he chose it, without making any discovery?—No. Had he any malice to the prisoner?—Was there any dispute between them?—Nothing of the kind was attempted to be proved. The testimony of the witness throughout was clear, collected, and consistent, without any prevarication. It was circumstantially supported by the testimony of alderman James and Mr. Carleton, and so far from being contradicted by the evidence examined on the part of the prisoner, it was strengthened in several respects. So far as the evidence for the prisoner went, it exactly tallied and indented with the account given by Lawler; but what amounted to very strong presumptive proof, in support of Lawler, was, that notwithstanding the various meetings particularized by him at Plunket-street, at Drury-lane, at Stoneybatter, at Cork-street, not a single tittle of evidence appeared to show that the prisoner was not at any of those meetings—nor did any of those persons stated to have been present at those meetings with the prisoner and Lawler appear to contradict him. So that, gentlemen, comparing the whole of Lawler's evidence with all the other

evidence which appeared in the course of the trial, they indented with each other so closely and consistently, without any thing to contradict them, that if you believe the evidence, you cannot hesitate to conclude that the indictment has been fully substantiated.

Gentlemen, the counsel for the prisoner have endeavoured to excite your humanity, in favour of the prisoner's youth. Humanity, no doubt, is a commendable virtue; but, gentlemen, the attribute of mercy belongs not to a jury, when justice requires a verdict upon your oaths, according to the evidence. If the youth of a criminal were to warrant a jury in finding a verdict against evidence, the most desperate conspirators against a state will have nothing more to do, than to engage the boys of a country in their plots, and if they be detected before the accomplishment of their purpose, the humanity of a jury is to intervene, and to screen them from public justice. Gentlemen, there is an instance in the conduct of the great Judge Foster, who was styled an humane judge, worthy of your attention. A boy of only seven years old, was tried before that judge, for murder. It appeared that the boy had been entrusted with the care of a child somewhat younger than himself, and upon a quarrel arising, he had killed the child; sensible of his crime, and apprehensive of detection and punishment, he concealed the body in a dung-hill. Some suspicions arising from the account he gave respecting the child, the boy was locked up in a room until he should tell the truth: at the end of two days, he acknowledged the murder, and discovered where he had hid the body. He was tried, and his years were urged in his defence. He was certainly of very tender years; but the learned judge observed, that his hiding the body, and his prevarication in the account he gave, all marked his sense of the wickedness of the crime.—The jury convicted him—he was not, indeed, executed, but respited from time to time, until at length he died in prison.*—Now, gentlemen, if in the present case, you believe that the prisoner at the bar is so young or so silly, as not to understand what he was about in the proceedings charged and proved against him; or that he was cajoled or enticed to swear oaths, and administer them to others, and to attend meetings of Defenders, for the purpose of seizing arms to assist the French, and all this through mere simplicity, inadvertence, or ignorance of the guilt; there, to be sure, his youth would deserve consideration. But this it is scarcely possible to conceive. You must, therefore, gentlemen, throw all false and partial considerations out of your minds—you must arm your judgments with

* See Yorke's case *Fost.*: 70; Mr. Justice Foster's report differs in some respects from the account here given by lord Clonmell. That Yorke's is the case to which lord Clonmell alludes, I infer from an expression of Mr. Lysaght in the case of *Hart infra*, p. 400.

manly feelings, and if you have no doubt, such as rational men may entertain, you will do your duty like conscientious men, and find the prisoner guilty. But if, on the contrary, you should entertain such a reasonable doubt, it will be of course your duty to acquit him.—The verdict will be yours, not that of the Court; and upon your consciences it will rest.

Mr. Justice *Chamberlain*, and Mr. Baron *George*, declined adding any observations to the jury.

About two o'clock in the morning of the 23rd, the Jury retired, and after deliberating for twenty minutes, brought in a verdict of *Guilty*; but recommended the prisoner as an object of mercy, on account of his youth.

The Court then adjourned to ten o'clock on Wednesday morning.

[The farther proceedings will be found at the conclusion of the next trial.]

616. Proceedings on the Trial of PATRICK HART* for High Treason, before the Court holden under a Commission of Oyer and Terminer at Dublin, on Wednesday February 24th: 36 GEORGE III. A. D. 1796.†

Wednesday, February 24.

PATRICK HART was this day put upon his trial upon an indictment similar to that which is set forth in the case of Thomas Kennedy‡ and therefore it is thought unnecessary to state it particularly.

The following jury were sworn, viz.

N. Trumbull, jun.	Francis Kirkpatrick,
William French,	Thomas Black
William Lancake,	George Simpson
Thomas White,	Matthew Nixon,
George Pillsworth	J. Hawthorn Grier,
John Ferns,	John Thompson,

Note. In swearing the jury, several challenges were taken on the part of the prisoner, for want of freehold. Some doubt was entertained, whether this was a good cause of challenge in the city of Dublin. The attorney general declined making any point, or arguing the objection, and the Court directed the persons challenged to be sworn, to answer whether they had freeholds in the city, and such as answered in the negative were not sworn upon the jury.

Mr. *Solicitor General*.—My lords, and gentlemen of the jury, though called on at the instant to state this case, I will not make an idle affectation of being unprepared. Instead of forgetting at this time, so soon after the late trials on the same subject, I doubt whether I ever shall forget the important facts, which this trial, like the former will produce. They are not novel to me, though they must again be explained to you—but conscious as I

am of the extreme fatigue which your lordships have already undergone, I shall endeavour to bring the case within as narrow a compass as possible.

It is very likely, gentlemen, that you may have heard a great deal before you came into the box; but I will caution you not to suffer your minds to be influenced by any thing but what shall appear on the present trial, in evidence upon the several charges in this very serious accusation against the prisoner. Gentlemen, the indictment is of considerable length. It has been deliberately and correctly read by the officer. Therefore, it is only necessary for me, in order to direct your attention, to state, that notwithstanding the length of the charge and the difficulty that might apparently be attendant upon an investigation of an indictment of such long and complicated formation, the case may be simplified to two charges, which if proved will bear upon the prisoner.

Gentlemen, under that remarkable statute of 25 of Edward the third, called the statute of treason, which although it has been acted upon for many centuries in England, has not been brought into familiar notice in this country, till modern times; I say under that statute of Edward the third, we are now regulated, not only in framing the accusation in cases like the present, but we are directed in the course of evidence necessary to bring home guilt to the party accused under that statute, and by cases solemnly adjudged upon trials of a similar nature; true it is, gentlemen, that the crime of which the prisoner stands charged is peculiar in its nature, and different from other crimes known to the law, because under the statute which I have mentioned, the bare imagining and intending of such crime as is alluded to, is the completion of the crime, if that intent be manifested by overt acts laid in the indictment, and sufficiently established by

* See the preceding cases.

† Taken by William Ridgeway, esq. Barrister at Law.

‡ See it ante

evidence within the statute.—Gentlemen it is unnecessary for me to labour the point to shew you, that in order to bring the person charged under one head of the treason charged, namely, that of adhering to the king's enemies—that if the party accused can be shewn to have so far seconded the endeavour of the king's enemies, at open war with the king, in such manner as to have invited them to invade the kingdom—to have associated with others, and enlisted men to raise an armed force, to second the invaders, when they should arrive—it is settled law, that such a case will not only go to establish the treason of adhering to the king's enemies. but will in its consequences go to prove the other charge of compassing the king's death—because the enemies of the king being invited to invade the kingdom with an armed force, and a force being raised here with a view of forwarding their purposes, to dethrone the king and overturn his government—that necessarily calls after it the death of the king, under whose auspices as head of the state, and as supreme executive magistrate, this constitution and government is preserved, and we possess and enjoy our liberties and existence.

So much, I should hope, will be enough, as to the general heads of the accusation. But in order to establish those general heads of accusation, it has been necessary also to lay certain overtacts—eight of which are set forth in the indictment, in order to bring home guilt to the prisoner at the bar. Of these overt acts, gentlemen, the one to which I shall direct your attention in the first instance, is that of associating with a body of men called Defenders—confederated together with an armed force to second the invasion of the French, at open war with the king; and in case they should invade this kingdom to forward their attempts in overturning the established government of the country.—Another distinct overt-act is that of enlisting certain persons to promote that first purpose I have mentioned, and is a necessary corollary to it, which leading primary intention, both are connected and combined for the purpose stated in the indictment.—Another overt act to which I shall direct your attention, is that of administering an oath, which oath together with a catechism (for I take them together as one instrument) upon the face of them, demonstrably shew, that the other purposes and overt-acts which I alluded to, will rest not merely upon their testimony, but will be established by written and irrefragable proof, so as to give demonstrable certainty of the great feature of the case, the decided existence of a foul and vile treason, which is the subject matter of your inquiry.—Gentlemen, it will establish the fact beyond controversy, in the first instance, namely, that the treason did exist; and secondly, that the prisoner participated, and was an active sharer in the guilt.

You are aware, gentlemen, that in taking this time, I am shortening the course of your

investigation, in order that your intention may be compressed as much as possible to this point, to which the evidence is immediately applicable. I come now, gentlemen, to another part of the case, and that which falls more immediately within your province to investigate, and decide upon.—I mean the nature of the evidence which will be brought forward to establish the guilt of the prisoner at the bar.—Gentlemen, it will appear to you that this infatuated and deluded man, and if I am rightly instructed, that (unfortunately) wicked person at the bar, had his mind so heated, so perverted, so contaminated by the treasonable pursuits in which he was engaged, that he had confederated himself with that body of men called Defenders, who have infested this country for four or five years past, under that particular denomination which has brought shame and disgrace upon this kingdom—so that nothing but the wholesome administration of justice, can induce any man to reside here, or ever make you worthy again to invite strangers to hold commercial connexion with you, by giving stability to your credit or security for the enjoyment of the sweets of honest industry.—I understand the prisoner at the bar is nearly connected with people of business in this metropolis, and has been bred up to the trade of a skinner. It will be proved that within this, your metropolis, there have existed within this short time past a number of societies all co-operative to one abominable mischief:—who through their different gradations of guilt, at last concentrated the carrying into execution their wicked and traitorous intentions in that body of men called Defenders, of whom the prisoner was one—not a passive member, submitting to the directions of others; but taking that leading, decisive and commanding part which belongs to a committee-man, and a leader in their discipline and counsels—an office which he held under the treasonable sanction of his engagements, formed upon the systematic plan of these societies, confederated for purposes the most horrid, and most formidable to the safety of the community. It will appear that this body of men, under the combined efforts of the malignant intervention of foreign missionaries—of domestic disaffected men of the industrious assiduity of persons engaged for some years past in attempts to overturn the state, and to bring destruction upon those men who wish well to the good order and law of the country.—This unfortunate man at the bar having embarked in the guilty purposes, and heated and inflamed with all the abominable mischief growing out of the circumstances I have mentioned, exerted himself with such activity, as to be entitled to that denomination I have stated, that of a committee-man. It will appear that these persons called Defenders, of whose confederation you will have decisive evidence from the oath and the catechism, could have nothing else in view than the object of embodying with

France, and to deluge the country with blood and confusion.—The oath and the catechism specially prove it.—The association met at several places, they enlisted men under the perverted sanction of a sacred oath—appealing to God, and binding themselves by an engagement, they laboured most assiduously to increase their numbers—they met in several places—they had their assemblies, their laws, their courts-martial and their committee-men—subscriptions of money,—arms provided by plunder—and by those means endeavouring to carry into effect their guilty purposes, so as not to leave the possibility of a doubt upon your minds as to the general intent.

The prisoner Hart appears to have had more than a common share, even as a leader and committee-man. The witness who will be brought forward to support this charge, has been already examined in the course of several trials. The same witness upon whose testimony the case will principally turn, will be now brought forward, and will prove the numerous meetings at which Hart attended that he appeared at the head of some of them as an authoritative person, announcing to the whole body, what the guilty purpose was. At some meetings powder and ammunition were provided—Hart will appear to have been an active man in swearing individuals, one of whom was reluctant, until he heard the purpose of the engagement. The meeting at which that transaction took place was at Stoneybatter, and there a person was brought in to be sworn—Hart was presiding as a committee man. He told the novitiate, that the object of engagement was to aid the French when they would land, and for that purpose they were to plunder the country of arms to be prepared for their arrival—you are, said Hart to obey all the mandates of the committee, and to be confederated with us upon oath which oath he accordingly administered. Gentlemen, at that very meeting at Stoneybatter, an engagement was entered into upon a difficulty appearing whether they were sufficiently armed to go out and plunder. "You must go back," said he, "and fetch your arms." Then a delay took place, some did not return, and it appearing there was not a sufficient number attending, Hart called upon those who were in the room and desired them to lay their hands upon the table, and swear by their solemn engagement to attend the next night, to be fully armed for the purpose of plundering the houses of the peaceable inhabitants in the confines of Dublin. It has appeared, that upon that very night when the confederation was entered into, a robbery was committed at a neighbouring house, which was plundered of arms, and those arms were found in the possession of Hart, when he was taken up. Those arms were plundered for the purpose of assisting the French, when they should land.

Gentlemen, there is another alarming cir-

cumstance, which will come out in proof, and therefore I state it, though I wish to be relieved from the pain of it. It is horrible in its nature, that we do not wish to impute it to the body of the Catholic persuasion; but there have been men abandoned enough to inflame and exasperate religious prejudices and that wicked principle is imputable to the prisoner, who out of his own mouth must be judged. It will appear, gentlemen, that at one meeting of Defenders, associated for the serious purpose of enlisting, embodying, and becoming formidable by military array, a conversation arose, in which the witness wanted to know all the purposes of the association, which Hart, as a confidential committee man, avowed himself entrusted with—upon that occasion Hart told the witness, "*Our intention is, to get arms from those who have them, and after we are thoroughly prepared, to massacre and put to death the Protestants of the country.*"—Here he avowed the horrid scheme. Gentlemen, I have thought much upon this subject, and I cannot bring my mind to suppose that so atrocious a malignity could exist in the minds of any body of men, as a deliberate purpose of murdering their Protestant brethren, and at this time, when we are receiving with open arms by every act of kindness and participation of benefit, the whole of our Roman Catholic fellow christians; yet some there are, who would make religious enthusiasm an excuse for the foulest crimes, with that horrid malignity with which Hart's mind was inflamed and was full. Much industry has been used to persuade the bigotted and uninformed Roman Catholic that his situation is such as calls for outrage as justifiable, because that he cannot accomplish abolition of tythes and reform in parliament; but there is no sensible Roman Catholic who must not be convinced that he is in the full enjoyment of every blessing which the constitution can give; and that it is high time to teach the conspirators against that constitution, that every honest man of every religious persuasion, joins to suppress that spirit of delinquency and outrage.

Gentlemen, I shall now state the papers very shortly which were found on the prisoner and which speak trumpet-tongued to your understandings. The evidence, if established, is in its nature, not fallible; it consists of written documents, found in the possession of the prisoner, and which are not subject to those objections imputable to evidence of another kind, where the fallibility of memory could deceive.

One of the papers begins in these words: "I do swear that I will be true and faithful to the present United States of F. and I. and every kingdom now in christianity, as far as in my power lies, without hurting my soul or body, as long as they prove so to me." Then it goes on, "And more I do swear, that I will be true to my committee and brothers, that is to say, in supporting

"the right and privileges of the United States of the kingdom now in brotherhood."—
 "More, I swear, that I will not come as an evidence against any of my brothers, in any cause whatsoever, except on a court-martial held by our committees, on pain of exclusion, or death, whichever is deserving."
 —The dreadful tendency of those engagements will be matter for your consideration. These papers were found in the prisoner's box—in another box was found a blunderbuss, and several rounds of ball cartridge, so that he appears to have had arms in one box, dangerous papers in another, and treason in his heart. Gentlemen, you will consider the whole of this case, and if there be a hinge left to hang a doubt on, I join in the recommendation to acquit the prisoner. If you find Lawler the witness, trip or equivocate in any one point or circumstance, you should never find the party accused guilty. But, gentlemen, if you find the witness perfectly consistent, and if the learned counsel, whose duty it may be to cross-examine him, cannot, under all the advantages of former disquisition involve him in inconsistency, and if he shall be supported, as I am bold to say he will be, by a train of corroborating facts which could not exist were not the principal charges well founded, it then only remains for you to perform that duty which your country has a right to demand at your hands; and I trust that no consideration will warp you from the important obligation which you are bound by your oaths, and on your consciences to discharge.

William Lawler sworn.—Examined by *Mr. Kells*.

[*Note.* The general tenor of the witness's testimony being the same as upon the former cases, it is omitted to avoid repetition. The additional matter was the private conversation with Hart, the prisoner, which was inadmissible evidence as against the former prisoners.]

He said, he met the prisoner at Nowlan's, in Drury-lane—it was on Sunday the 23rd of August, after the meeting at Stoneybatter—it was a society of Defenders—there were more than twelve at the meeting—it was about seven in the evening. The prisoner asked witness if Coffey and Dry were not Protestants—witness answered, he believed they were—the prisoner said he would not sit in company with them; the reason the prisoner asked him was, because he was acquainted with them both.—The prisoner asked witness what religion he was of?—witness answered he was a Roman—the reason he said so was, because Brady told him when he went to be sworn, to say he was a Roman, for that they had an objection to admit Protestants.—Witness asked the prisoner his reason for asking the question so many times; prisoner said, because he would

not sit in company with a Protestant.—That the night before, the Defenders were to have risen, but on account of the harvest not being got in, it was deferred; for, if the harvest should be destroyed, they would be starved, but as soon as it was got in, they would rise upon the Protestants, and put them to death, and that the forts would be attacked at the same time—he meant by the forts, the different garrisons in Ireland.—The prisoner said he would call a committee of twelve men, and that Lockington should be made a prisoner, and they would then consult what death they would put him to, for having brought Protestants among them—the prisoner was then called to order by Coffey, who was in the chair—Coffey wanted to know what number of Defenders there were in Dublin, that they might be officered;—the reason the prisoner and the witness were called to order was, because they were from the table, and at the window—witness met the prisoner on the following day in the liberty; there was a young man with him, who the prisoner said was a Defender—he shook hands with the witness, and pressed witness's hand with his thumb, which was a sign that he was a Defender;—the prisoner asked witness if he had any ball at home, or if he knew how to make ball cartridges; told him he did, and that he had ball at home—prisoner gave witness some gun-powder, about half a pound, and desired him to make cartridges, and let him have them in the evening.—Witness asked the prisoner if there were 400 Defenders in Dublin—he said there were 4,000 if they were got together—they then separated, and witness went to Dry's in Cork-street.

The oath and catechism found upon Kennedy were read, after which the witness said, he wished to mention something to the Court. One of the witnesses, said he, who appeared on the last trial, was the man who lent me the case of pistols when I went to the watch-house, and, when I went to Stoneybatter.

By the Court.—What is the name of that man?—Galland of Crane-lane. He lent me a pistol when I went to Stoneybatter.

Who has that pistol now?—It can be got by sending for it.

Whereupon the pistol was sent for.

Cross-examined by *Mr. Lysaght*.

Witness saw another person who came to discredit his testimony, who did not lend him a pistol—could not say any thing of the man—his wife told him he was the person who melted down the bullets—could not say Mr. Robinson was a good man—he used witness more like a servant than any thing else—was not taken by him through charity—last saw his father in England, his father was not a member of any of the Corresponding Societies—witness had been frequently in company with the prisoner. It was said at Hoey's—

court, when they should rise, that the first persons they should put to death would be Jackson's jury. There was a society met at witness's room and at Galland's—Strephon and witness were the principals who induced them to go there—never said there was no God—Burke wanted the members to believe there was no saviour—never heard that the society dissolved in consequence of witness's blasphemous expressions, for he never made use of any. When the petition of the London Corresponding Society was refused, some of them said, they ought to go to the throne with arms, and have what they wanted. One Baxter in London, asked witness if he had room for 100 arms, and if he would meet some of the members at Turnstile, Holborn, and learn his exercise, as the Sheffield members did. Witness administered oaths to some people, but they were not little children—some of them were apprentices—could not say how old the little boy was that he swore in Castle-street—was more than ten years of age—if he were produced, he might guess—did not know his name—the youngest he ever swore was 17 years of age—it was a rule not to admit any members under 18—there was one James Steward, who used to carry about the books—never swore a boy with a pistol to his breast—was asked before about it, but it was not true—witness did venture to deny it upon a former trial—heard the Telegraphic and Philanthropic Societies consisted of 100—could not tell how many Protestants—there were Protestants and Romans in the Philanthropic Society—witness used frequently to work on Sunday—did not attend church, when he thought it no crime to kill the king—did not go to church at the time the pistol was fired into the Watch-house—there was an intention of liberating the recruits in a crimping-house at the corner of Bull-alley—did not know how much bounty he got, when he enlisted—witness's brother changed his name to John Wright—is now in Chester—witness liked the prisoner as a Defender when he belonged to them, never declared, since he was taken up, that he would rather hang the prisoner than any of them. The members of the Philanthropic Society were divided into four divisions, and there were thirty-five in each division—did not believe the prisoner was a member of the Philanthropic Society.

Mr. Alderman James sworn.—Examined by Mr. Prime Sergeant.

Granted a warrant against the prisoner, to Mr. Philip Henry Godfrey, grounded upon informations from Lawler, who gave a description of the different persons, and where they would be found.

Cross-examined by Mr. McNally.

Took Lawler's examinations on the 27th of August. Atkinson was arrested upon the 24th—witness went to the Liberty, where

he saw near 3,000 people, who dispersed upon seeing him and the army. Had information there was an intention to attack the Castle, and the Bank—had information from Lawler, and other persons—did not take the information of those other persons upon oath, because they did not wish to have their names made public—their information agreed with that given by Lawler—Lawler did not say, he was one of the party to attack the Chancellor.

Philip Henry Godfrey, sworn.—Examined by Mr. Worthington.

Received a warrant from alderman James, to apprehend the prisoner and several others, and accordingly went to the House where the prisoner lived—broke open the street door with a sledge, went up stairs, found the prisoner and another boy in bed—took a paper, or parchment out of the prisoner's breeches pocket—knew they were his breeches, from his having told the witness so—they were not the breeches which the prisoner put on—found some parchment and papers in a box in the room—a broken blunderbuss, and about 20 rounds of ball cartridge—witness did not inquire whose the box was—nor did he know.

Cross-examined by Mr. Lysaght.

Did not know of any threat, or promise held out to the prisoner—witness did not hold out any—would not answer for what the persons about the prisoner might have done.—On the way to Newgate, the prisoner told the witness, that the breeches were his—he also said he was a sworn Defender, but was sworn by compulsion, and had the parchment forced upon him—witness did not know, nor could he form a belief, whether Lawler visited the prisoner at the house where he lived.

Here the parchment found in the breeches pocket was read, and was as follows:

"I, A. B. do in presence of God, swear of my own free will and accord, that I will be true to the United States of F—— and I—— and every other kingdom now in christianity, as far as in my power lies without hurting my soul or body, as long as they prove so to me: and more I do swear, that I will not go with any robber or thief, or any person that is suspected to defame our society in any character whatsoever, or keep such people company, if to my knowledge I know it, and more I do swear, that I will be true to my committee and brothers, that is to say, in supporting the rights and privileges of the united states of the kingdom now in brotherhood, or may be hereafter, and that I will not wrong any of my brothers to the value of 2d sterling, to my knowledge; and more I do swear, that I will not come as an evidence against any of my brothers in any cause whatsoever, except on a court-martial held by our committees, on pain of exclusion or death,

whichever is deserving, and more I do swear, that I will not strike or ill use a brother in any respect; and that if I see a brother struck or ill used, I will aid and assist him as far as in my power lies, if in a just cause, if to my knowledge he is a brother; and all brothers is to live lovingly and friendly together, and to have no quarrels or disputes whatsoever, and he that does, is to be excluded as long as the committee thinks proper, and to avoid such things, you are not to play at any sort of gaming with any of your brothers for more than sixpence sterling at one time: and more I do swear, that I will help to support a lawful well inclined brother in all distresses whatsoever as far as in my power lies, without hurting myself or my family, and that I will meet when and where my committee thinks proper, and spend what is agreeable to my committee and company, and that monthly or as the committee thinks proper, and this article is according to the united states of the kingdom."

Signed by order of of the
head Committee of F. & I.

Mr. *McNally* objected to the reading of the papers found in the box; they were not proved to be the prisoner's hand writing, nor was the box proved to be his property.

The Court said the papers found in the box could not be read.

Oliver Carlton, esq. sworn.—Examined by
Mr. *Ruston*.

This witness repeated the testimony he had given in the former cases.

Evidence for the crown closed.

DEFENCE.

Mr. *Lysaght*.—My lords, and gentlemen of the jury, I have been very suddenly called on to day (as I was also on the last trial) to defend the unfortunate prisoner at the bar; the very able and eloquent advocate, who had been assigned one of his counsel, having been prevented by avocations elsewhere, I presume, or some other justifiable reasons from attending. And I feel this disadvantage the more strongly, inasmuch as the facts charged against the prisoner at the bar, are of a very different nature from the facts charged against those for whom I had been originally assigned counsel. I likewise feel much discouragement in my own mind, and am diffident of its executions from reflecting that I have the misfortune to differ in some degree from the bench, in my conception, both of the nature of the evidence, and the law applicable to the facts which were thought to have appeared on the last trial—the trial of *Kennedy*.

I feel all due respect for the bench, and trust it is not inconsistent with that sentiment to say, that their lordships are to fulfil a very important and awful duty; they are to decide the law and to be adjudged by the present

generation, and by posterity for such decision on cases of singular nicety and acknowledged novelty. As to matters of fact, you gentlemen of the jury, are to be assisted and advised, but by no means governed or controlled by their lordships? the court which I have the honour to address, will tell you that by our happy constitution you are to determine matters of fact, as they are to determine points of law resulting from, or arising out of the evidence; therefore should any judge on any trial, labour hard for hours, and argue strenuously to make strong impressions on your minds, analyze, sift, doubt, question, and consider fully such argumentative charge—and should you feel a different persuasion from that sought to be stamped on you—away with all false delicacy and culpable veneration for the Bench. Judge for yourselves—prefer your own judgments—assert and vindicate and maintain the undoubted rights of juries. In this respect, I mean the authority and supremacy (if I may use the expression) of juries, the wisdom of the law is manifest. Judges of the land are enveloped in abstract studies; their minds pure and lofty are filled with lucubrations of twenty years, and incessant contemplations, on the book of science.—You, gentlemen, are conversant with the transactions of ordinary life, and have daily opportunities of reading every diversified page of human disposition, habit and character; and are (I say it with great respect to the court) more competent than a jury composed of the twelve judges could be, to try matters of vulgar incident and groveling fact.

Gentlemen, having said thus much, I shall concisely and strictly consider the facts which have appeared in any thing like credible proof this day against the prisoner at the bar. The solicitor general who stated the case for the Crown with great candour, has told you that the evidence on which only you should convict the prisoner, ought to be such as could leave not a hinge to hang a doubt on—the expression does him honour—meet that idea gentlemen, and even enlarge by your commentary on it, and add that the doubt should be a reasonable one—such as a rational mind should give reception to.—Go thus far and regulate your decision by that criterion, and I trust, that I need ask no more, I trust, that I shall fill a reasonable mind with rational doubt as to the prisoner's guilt. I shall not arrogate more to my humble talents, a more eloquent advocate could illustrate his innocence.

My lords, and gentlemen of the jury, the unfortunate child at the bar, is indicted for two species of high treason, for compassing and imagining the death of the king, and for adhering to the king's enemies;—all of any thing like credible evidence to support the indictment, is a paper said to be found in the prisoner's room, importing that the person reciting it is to be true to the united states of

F. and I.—F. and I. are stated by counsel to mean France and Ireland. The evidence which I shall beg leave to call utterly incredible, is the testimony of Lawler. Now, gentlemen, in my humble apprehension, the barely having in one's possession, without publication, such a paper as that found in the prisoner's room, is not an overt act of adhering to the king's enemies, the paper contains no intelligence, there has been no attempt at proving any intended correspondence or communication with the enemy.—Where do the prosecutors look for treason in this case they are driven to explore the foulest place, the breast of an infamous witness:—exclusive of the testimony of Lawler, nothing has appeared to fix treason or felony under the white-boy acts, or defenderism, or even sedition, upon the prisoner.

The Solicitor-general, in stating that the prisoner declared to Lawler that his wish and design was, to massacre all the Protestants, said it showed such malignity, that he could not believe it existed in the minds of many men of this country. Merciful God, is such a witness as Lawler to be credited when he imputes such a sanguinary disposition to any person, to a boy of tender years! no gentlemen! Youth is not the season when that depravity seizes the heart. The poor prisoner must have been a fiend from his birth if he harboured such a thought. He must have been suckled by a Tigress or Hyena, and have served his apprenticeship among the cannibals in the human butcher's stall. No gentlemen! the wretch who perjured himself for the paltry bounty-money given to recruits, is more likely to invent a falsehood under the influence of sanguine expectation of great reward, than a young boy of reputable connexions and good education is, to form the horrid scheme of murdering all the Protestants—Lawler told you the prisoner said he quitted one club because there were Protestants in it, yet he swears the same Protestant-hater got into another club, in which there were more members Protestants, than in the former club. Lawler confessed that he fired a loaded pistol into a watch-house full of watchmen, and that he thought it no crime to murder his king.—Is it not likely, therefore, gentlemen that this nefarious wretch, stained with perjuries, felonies and treasons—insatiate of blood like the Renault of the poet and the Robespierre of inhuman memory—is it not likely, I say, that the caitiff who would murder his king in the speculation of power would invent the horrid tale of intended massacre to facilitate the murder of a subject in the speculation and chance of reward? His consistency has been mentioned—yes, he is very consistent; for the printed trials of Weldon and Leary were probably in his hand till he came into court—in his perjuries and execrable treachery he is consistent—Weldon is to die, by the evidence

which a jury disregarded, though it was thus consistent on the trial of Leary—Kennedy has been convicted by another jury, (who with great respect for them I say it) possibly did not reflect that a witness of veracity might not be so minute in the detail, so circumstantial and consistent—in his insatiable thirst for blood he is consistent—I know not what measure of it will glut him, if you do not act with caution and mercy. Titus Oates was not less consistent—numbers of false witnesses have been as consistent—deluded juries and judges have been abused by their apparent consistency, and numbers of innocent men have fallen victims to it.

Gentlemen, you are not, I hope, to be misled by any description of the distracted state of the country, to give an unwarrantable, precipitate verdict of guilty, on a charge of high treason. If there be Defenders, there are statutes in force against them amply sufficient to curb such offences, and the punishment in many cases of Defenderism is death.—Will you libel the nation by magnifying outrage, riot, or felony into treason?—Do not preclude the reformation of the lower classes, by infusing into their minds a distaste for our invaluable constitution, which they indubitably will feel if the administration of justice be not pure, temperate, and just.

I shall call witnesses of unimpeachable character to show that Lawler deserves no credit on his oath in a court of justice. He has not particularized dates; we therefore cannot produce witnesses to prove an *alibi*—consider, gentlemen, the avowed infamy of the witness, and the extreme youth of the prisoner—in the case of William Yorke*, adverted to on another trial, the murder spoke for itself, and established criminality with a crying fact—but the crime imputed to the prisoner is a crime of intention, the proof of it resting on the testimony of an infidel felon.—Gentlemen, I have done; remember that the God who gave these favourite kingdoms so blest a constitution, delights not in human sacrifices.

William Rochfort, sworn.—Examined by Mr. M^r Nally.

Knows Lawler six or seven years—his brother served his time in the same house with the witness, and went by the name of Wright, before he went to England.—Witness never belonged to any club, or society.

Cross-examined.

Had been summoned to attend the Court—he attended in consequence of an indictment against him, at the suit of John Giffard, for publishing a print, entitled, “Kennelling of the Dog.”

Nicholas Clare sworn.

Gave the same evidence as in the former case.

* Quoted in the preceding case by the earl of Clonmell; see p. 386.

William Ebbs sworn.

Gave the same evidence as in former case.

Mr. M^cNally.—My lords, and gentlemen of the jury, it is not usual for counsel to have permission to address a jury, on matter of evidence, or even to state a case in the defence of a man on the trial of his life for a capital crime; for so rigid is the ancient rule of the common law, that except on collateral points of law, the Court never assigned counsel. But the legislature, gentlemen, has by a humane and indulgent statute in favour of the people relaxed that rigour, and has given to a prisoner, who is charged with the crime of high treason, a privilege to demand the aid of counsel, who are in such cases assigned by the Court. It is by the authority of that statute, gentlemen, that I now have the honour of addressing you on the part of the prisoner at the bar. But, gentlemen, I have to regret that the act to which I have alluded, has not in every particular and provision followed the wholesome English statute for regulating trials for high treason, of which it is but merely a short abridgment; for if the Irish act had followed the English statute, I should not now have had any occasion to address you on the part of the unfortunate youth standing at the bar; for, by the English statute it is provided, that in all cases of high treason, where corruption of blood is the consequence of a conviction, there can be no verdict of guilty, unless there be at least two witnesses produced by the crown to support one overt-act of treason, or one witness to one overt-act, and a second witness to another overt act of the same species of treason, so that in the present case, if the English statute had been fully adopted, by the Irish legislature, the prisoner at the bar must be acquitted in point of law, as there is but one witness produced to support the overt-acts of treason charged against him in the indictment. God forbid! gentlemen of the jury, that I, or any Irish lawyer should dare to insinuate that English statutes should have authority in Ireland, without the sanction of the Irish parliament. But principle is immutable; principle is the same in both countries, and I trust I have a right to tell you, that in considering your verdict this day, it will be your duty to apply the principle of English jurisprudence to the present case. A great and a learned writer has laid down the principle, that makes two witnesses necessary in cases of high treason. Gentlemen, I will give you his words: He says, "In cases of treason, there is the accused's oath of allegiance to counterpoise the information of a single witness, and that may perhaps be one reason why the law requires a double testimony to convict him:" though, "the principal reason," continues the learned commentator, "undoubtedly is, to secure the subject from being sacrificed to fictitious conspiracies which have been the engines of profligacy and crafty politicians in all ages."—

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Gentlemen, I do not mean to apply the words "crafty politicians" in the same manner they are applied by the learned judge, whose words I have just quoted. I do not mean to apply them to any of the persons carrying on the business of government in this country. No, gentlemen, the "crafty politician," whom I intend to make the object of your serious consideration, as I am well convinced he is of your abhorrence, is Mr. William Lawler, the witness who has this day made his fourth appearance in this court. Gentlemen, it is clear that he is the "crafty politician," who was well versed in acts of deceit before he left England. It was there he became tutored in vice, it was there he noviciated in the acts of hypocrisy and dissimulation, and from thence he returned into this, his native country, a corrupter of our unsuspecting and unwary youths. Like Satan who scaled the gardens of Eden, and having instilled the poisons of sin under the pretence of communicating knowledge into the ears of innocence, abandoned the deluded victims of his diabolical subtlety and deceit, to death and perdition.

Gentlemen, as we have adopted the English constitution, we have a right to decide upon its principles. In England, one witness, though immaculate as an angel, could not convict a person charged with high treason, and will you, gentlemen, establish by a verdict of guilty, that in Ireland the tainted breath of a fiend, which in England could not agitate a feather in the scale of justice, shall start and blast from the face of the earth one of God's creatures! It may be asked what could have been Lawler's motive? I answer, God, the searcher of hearts, can only know the motives of this devil, in first seducing his proselytes and then betraying them to death.—He has said, repentance was his motive, but I rather conceive it arose from the impulse of fear. Gentlemen, his object for instituting societies, however, is plain.—The Bank was one of his objects—so says alderman James, could he have but persuaded those whom he had seduced to have assisted him in plundering the Bank, his object would have been fulfilled, and under another fictitious name he would have fled elsewhere to enjoy his plunder, and meditate on fresh enormities.

Gentlemen, permit me to trespass a little further on your indulgence—permit me to solicit your serious attention to Mr. William Lawler the prosecutor, and to the prisoner. In the one you see an adept in wickedness, which could only result from a polluted heart and spotted soul. In the other you view a boy, who from his youth must appear to you a novice in politics and in offences—and if you should believe, that he has been misled and fallen into error, surely you will not visit the sins of the seducer upon the head of the seduced—I will venture to argue, gentlemen, that from legal principle you ought not.—Gentlemen, you have heard the confession made by Mr. Lawler the witness; what con-

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essions have you heard him make?—You have heard him confess to the commission of felonies, of conspiracies, and of perjuries. Now, gentlemen, I maintain, that by the law of the land, if Lawler had been convicted of even one felony, one conspiracy, or one perjury, by producing the record of conviction of either of those crimes, the Court would be bound to prevent him from giving evidence on the ground of incompetency arising from infamy—and you would be bound to acquit the prisoner for want of evidence. Competency is a question of law, it is to be determined by the Court, but after the Court have determined upon the competency, and the witness is sworn, then arises the question of credit, and that question depends solely on the determination of the jury.—From these premises I draw conclusions, which I submit to your deliberation. I submit that every juror amongst you must from the perception of your own reason, consider Lawler in no other light than as a convict—you must from the evidence of your own senses, for you saw and you heard him, consider him as convicted on his own confession, the strongest evidence the law knows, when applied against the party confessing, though the weakest and most suspicious when made use of against a second person. I say, that Lawler, on his own confession, stands a convict before you of one felony in attempting to murder a watchman, by discharging a loaded pistol into the watch-house—of one conspiracy to murder the lord chancellor—and of one other to murder a witness who was to give evidence on the part of the Crown.—Perjuries are also recorded in the black schedule of his crimes, and of those you are also in possession by the strongest proof possible—his own confession. If then, gentlemen, you believe this witness guilty of those crimes which he has himself confessed, does he not stand before you as a convicted felon, and of course as infamous and as villainous as if he had been regularly tried and found guilty by any other jury?—I repeat it, gentlemen, if this miscreant had been convicted by another jury, you, gentlemen of the jury, could not this day have heard his testimony, the law would have arrested his evidence, for the Court could not legally, and therefore would not have submitted him to have undergone an examination; and I say, it follows of course, that if you are bound to hear his testimony, he not being an incompetent witness, yet you are also bound to reject his evidence, he not being worthy of credit; for the same principle that rules the Court on the question of competency, should from analogy and principle, rule the judgment of a jury on the question of credit.

Gentlemen, three witnesses have been produced on the part of the prisoner, and they, from a knowledge of the general character of Mr. Lawler the witness, from a knowledge of his impiety and immorality, have positively deposed, that he is a man of so infamous a

character, that he ought not to have credit on his oath, giving evidence in a court of justice. Gentlemen, an attempt has been made by the counsel for the crown, to impeach the testimony of those witnesses; it has been shown on a cross-examination, that one of them was a member of the Telegraph society at a time when its purposes were merely confined to reading—but does that affect his credit? or if it did, are there not twelve other witnesses who do not belong to any society, well acquainted with Lawler's general character and infamy? Gentlemen, the twelve witnesses I speak of, are yourselves. Gentlemen, let me intreat of you when you retire from your box to deliberate on your verdict, to ask each other whether this fellow is not of a most infamous character? whether you have not full evidence before you from out of his own mouth, of his infamy, and whether you, as jurors upon your oaths, with the internal knowledge of his guilt in your minds, can give credence to the testimony of so abandoned, so infamous, and so impious a wretch upon his oath?

Gentlemen, you have heard a great deal of the consistency of this witness. My learned friend Mr. Lysaght, has made several pointed and judicious animadversions on this subject, I shall therefore only trouble you with one or two more. From what cause does this consistency proceed? Is it the emanation of a cool, collected, ingenuous, and virtuous mind? No! an honest man in giving evidence to affect the life of his fellow creature, to affect the life of a boy, whom he had described as having been once his confidential friend, would evince compunction and feeling, he would give his evidence with trembling and apprehension, he would not have shown a promptitude to answer, an eagerness to explain and connect, arising from a pre-determined intention to convict. Gentlemen, the witness is well experienced and perfect in the part he has this day acted on the table. He has been examined on the different trials, these trials have been printed—he has read them with attention, he has studied his *vade mecum* of evidence, and now comes into court fully instructed and prepared from his printed briefs. I will now show you in what Mr. Lawler has not been consistent. He has suppressed and he has extended his evidence to answer his views. He has this day gone farther before the Court, than he ventured to go when he gave his informations before Mr. alderman James, he on that occasion, suppressed the intended assassination of the lord chancellor, he suppressed the intended assassination of Cockayne, and would still, no doubt, have suppressed his knowledge of those diabolical conspiracies, if I had not extorted a confession from him on his cross-examination on a former trial. Gentlemen, his suppression of dates is most material, for except in one instance, this witness of extraordinary memory has recollected but one date. The intent of this cunning is manifest—had he sworn to

dates the prisoner might have proved an *alibi*, that is, gentlemen, he might have shown that on the day sworn to by the witness, he, the prisoner, was in another place, but the witness by artfully omitting, the day, has precluded the prisoner from defending himself from any charge depending on time or locality.

It is unnecessary for me, gentlemen, to engage your time by entering at large into the law of the case, the Court will fully instruct you on that head, but the determination lies with yourselves, for I venture to say, that no lawyer will controvert the right of the jury to determine on the law as well as on the fact in a criminal case; to take both together into their consideration, to determine upon both together, and to found their verdict on both is the established and indubitable right of a jury. This leads me, gentlemen, to take a slight view of the indictment, in doing which, I shall anticipate an observation, that may be probably made this day, because it was made by the counsel for the crown on a former occasion, and the case of doctor Hensey,* as convicted in London for high treason, was mentioned to support it.

Gentlemen, the indictment which you have heard read, and on which you are to decide, consists of two species of high treason. It first charges the prisoner with compassing the death of the king; and secondly, it charges him with adhering to the king's enemies. As to the first charge, I conceive it has not been supported. And, as to the second, as I presume the counsel for the crown rely upon it, to it alone will I call your attention. The overt-acts in this species of treason to be found in the books, are these: giving intelligence to the enemy; selling them provisions; selling them arms, or surrendering to them a fortress. In every trial I have seen on this species of treason, there has been evidence of a connexion, a reciprocity between the parties charged as traitors and the enemy, but you have not had a *scintilla* of evidence laid before you to show the slightest communication between the prisoner, or between the persons denominated Defenders and the king's enemies, "the persons exercising the powers of government in France," nothing even like agencies has been given in evidence. In Florence Hensey's case, quoted by the chief justice on a former trial, there was actual evidence given of his correspondence with a minister of France. In De la Motte's case,* it was proved, that through the medium of agency he communicated intelligence to the enemy, and in that case it was said, that the prisoner by entering into a conspiracy to send intelligence to the French, was not guilty of high treason, but that the intelligence which was sent must be laid before the Court by legal evidence.—Now, here the evidence goes

no farther than a bare conspiracy. In Jackson's case,* recent in every man's memory, letters delivered at the Post-office, intended to be transmitted to foreign parts, containing a description of the situation of this country for the use of the enemy, were arrested in their progress in the Post-office. Gentlemen, have you any evidence similar to this in the case before you? No; in all the above cases the treason was consummate; in the case before you, the treason is inchoate. In the offence of compassing and imagining the king's death, wise and eminent lawyers have certainly held that evidence of the intent substantiated the crime, but no lawyer has as yet ventured to advance, that an intent to adhere to the king's enemies substantiated the offence of high treason; and, gentlemen, I do insist, that should you believe every word Lawler has sworn, and the construction the king's counsel has put upon the papers produced an intent to adhere, or a conspiracy to adhere, and no more has been given in evidence. I will go farther; I will venture to maintain, that the indictment does not charge a substantial treason. Gentlemen, attend to the overt act: it charges that the prisoner, in order to enlist William Lawler, a liege subject of the king, to be aiding and assisting the persons exercising the powers of government in France, being enemies, in case they should invade, or cause to be invaded, this kingdom, administered or cause to be administered an oath to said Lawler, and swore said Lawler to a certain profession, declaration, or catechism to the purport following, &c. Now, gentlemen, this I say, goes no farther than to show an intent to commit treason, there is no positive adherence to the king's enemies shown by this overt act; no, the worst that is shown is an intent of conspiring to assist them on the completion of an uncertain event, the event of their invading, or causing to be invaded, this country, an event which, I trust in God, never will take place, or if such an attempt should be made, that it will be rendered abortive by the spirit of Irishmen and the discomfiture of the foe.

As to the papers, I am well aware, you will hear much on their meaning from the learned counsel who is to reply on the part of the crown, but whatever constructions he may put upon their contents, or whatever construction you may apply to them, it will be your duty to recollect, that they were permitted to be read, not as evidence connected immediately with the prisoner, but as evidence to show an existing conspiracy, and the existence of a conspiracy is not of itself legal evidence of treason or of guilt against the prisoner; nor is there any evidence before you that he had any knowledge of these papers, they are not offered as being in his handwriting, they are not offered as being found in his possession, but the parchment was found

* See it, *anté*, Vol. 19, p. 1341.

† See it, *anté*, Vol. 21, p. 687.

* *Anté*, Vol. 25 p. 783.

in a room wherein Mr. Godfrey, constable of police, swore the prisoner lay.—How is that accounted for? Mr. Godfrey told you he spoke to him on the subject, and that he had been sworn by compulsion. If you take what he said to Godfrey as a confession, you must take the whole of that confession, and in doing that, you must take such facts and circumstances as make for the prisoner as true. Gentlemen, it must be known to some of you, that persons of the first character in the country have been compelled to take the Defender's oath, at the risk of losing their lives if they refused, and therefore there can be nothing fanciful or ridiculous in my asserting that it is not impossible, but the prisoner was forced against his will to take an oath, and that at the same time the parchment produced, was put into his hand. You must have observed that Mr. Lawler is blessed with a most accommodating memory, he can extend or contract it at pleasure; with the most extraordinary tenacity he remembers every conversation he held with the prisoner, not forgetting a single interrogatory, or answer. I say, he has a recollection for all occasions to serve him when necessary, to revive, to come, to go at pleasure. He perfectly recollects swearing an infant, but he cannot remember either his age or name. He perfectly recollects administering an unlawful oath of secrecy to him, but he cannot remember whether he administered the oath with a pistol to the boy's breast. He cannot recollect whether this boy was ten or eleven years of age, but he could tell his age if he saw him, and then, forgetting this circumstance for the purpose of injuring the youth at the bar, he cunningly swears he never administered an oath to a man of less than seventeen years of age. Gentlemen, if I do not go fully into this case, it is not from want of zeal or attention to my client; this is the fourth time I have had occasion to address a jury on the subject of Mr. Lawler and his enormities. The human mind becomes languid by repeatedly thinking on the same subject, and when the subject is like the present, the mind becomes disgusted. Indeed, gentlemen, I had forgot this is the first time I have had the honour of addressing you, and from an apprehension of wearying your patience, shall probably leave unobserved, many material points. But, gentlemen, I feel consolation, when I look to that bench, because I know the great and enlightened characters who preside there will not leave untouched an iota of evidence, that has appeared to them favourable to the prisoner, but will address you in a mild and constitutional charge. Gentlemen, judges are the representatives of his majesty, and in the discharge of their judicial duties, will follow that sacred obligation which his majesty enters into with the people, when he assumes the reins of executive government; I allude to the coronation oath, by which the father of his people swears and undertakes to administer

"justice in mercy." He is the fountain of mercy, and the mandate of his divine attribute should flow through the bosoms of every magistrate acting under his delegated authority.

The Solicitor-general, in a strain of candor which does that learned advocate much honour, urged an observation, that I trust is strongly impressive upon your minds, he told you emphatically, "If there be an hinge left by the witness to turn a doubt upon, you ought to acquit," and, gentlemen, the bench will lay down the same rule when they come to give their charge. They will tell you that no man ought to be convicted in an Irish court of justice on facts which are not indubitable. Where the witness is weak, there must be a doubt, and where there is a doubt there must be an acquittal: such, gentlemen, I say, is the merciful rule of the criminal law in this country, that though the conduct of a party accused, even of the most heinous offence, should not appear perfectly innocent, yet he is intitled to a verdict of acquittal, for if there be a doubt on the minds of the jury, this benign rule of clemency becomes imperative, and you will implicitly submit to its authority, for there is an old and wise maxim, better that ninety and nine guilty men should escape punishment than one innocent man suffer. Gentlemen, I shall here conclude, imploring you to take into your consideration, that though you should acquit the prisoner in error, and hereafter make the discovery, as that error will be founded on mercy—mercy originating with God and constituting the benign prerogative of the crown—the discovery will neither disturb your sleep, nor injure your waking moments, you will lie down in comfort, you will rise with cheerfulness, you will walk abroad in peace with placid consciences.—But, gentlemen, should you convict in error, how would your hearts feel hereafter, how would your minds suffer from such a horrid discovery? Would not appalling fear shake every nerve, would not bitter remorse and repentance be the consequence when you heard the voice of an innocent victim in the language of the scripture, shrieking from the grave, "Oh! earth cover not thou my blood?"

Gentlemen, one observation more as to what has fallen from the counsel for the crown. It has been asked, and the question conveys a strong conclusion should it go unanswered—it is asked who so likely to give information of treasons as a traitor?—I answer with another question—who so likely to swell minor offences into crimes of the first magnitude as the traitor who, with reward in view, insinuates himself into the confidence of others, for the purpose of making the betraying of their secrets or the invention of chimerical conspiracies, the means of ensuring that reward? Gentlemen, such a wretch as Lawler.

Mr. Saurin.—My lords, and gentlemen of

the jury.—This in truth is so plain a case, that it will be unnecessary for me to take up much of your time. Gentlemen, the prisoner at the bar stands indicted for high treason, the indictment contains two species of that offence, namely, compassing the king's death, and adhering to the king's enemies. With respect to the first, you have been already told, that it need not occupy much of your attention, because if you shall be satisfied from the evidence you have heard, that the prisoner adhered to the enemies of the king, at open war with the king, that will support the second charge in the indictment, and will also be evidence of the first, that of compassing the king's death.

Mr. Saurin then observed upon the evidence, and contended that however criminal Lawler might appear, his testimony was so consistent and so corroborated by circumstances which could not be controverted, that the inference of the prisoner's guilt became irresistible.

[These points being fully observed upon by the Bench, will apologize for not giving Mr. Saurin's argument at length.]

Earl of Clonmell.—Gentlemen of the Jury; Patrick Hart, the prisoner at the bar, stands charged with high treason on two distinct species of treason, ascertained by the statute 25 Edward 3rd.—This is a statute which has not been passed in the heat of tumultuous times, or the ardour of irritated contention—it is a part of the constitution which, while it defends the prerogatives of the crown, and protects the safety of the royal person, is a shelter to the liberties of the subject, by stating with clearness and with caution, what acts shall be considered high treason: not leaving it to tyranny or caprice, to assume to itself as in other countries, to deliver a distinct opinion on vague and uncertain charges, in order to lay the ground-work of the destruction of individuals in consequence of the constitution not having been explicitly defined.

The first species of treason with which he is charged is, having compassed the king's death on the days and at the places set forth in the indictment.—It has been said at the bar, and the law is so, that whoever endeavours to destroy the monarchy by force makes an attempt to take away the life of the monarch—and one observation shall not be concealed from you, which is, that adhering to the king's enemies has never been doubted as an explicit manifestation of an intention to take away his life. To support this charge several overt acts stated to have been committed by the prisoner indicative not solely of this treasonable intention, but also ascertaining the means by which it should be carried into execution, are laid in the indictment.—The same overt acts are laid to support the second charge in the

indictment, and to this second charge I shall particularly direct your attention;—you have heard these acts read from the indictment by the clerk, and I shall also take notice of them:—the first is, that during an open and public war, of which common notoriety is sufficient evidence, carried on by the ruling powers of France and the king of these realms, the prisoner at the bar is charged first, that he as a foul traitor against his majesty king George the third, &c.—[Here his lordship stated the several overt acts.]—Gentlemen, as part of this evidence adduced in support of this indictment is written and part of it oral, I shall first state the written evidence.—[His lordship then read the oath and the catechism.]

These are two of the papers; you will see from your notes whether I state them correctly—these are the papers sworn to be the bond of Defenders in general; I shall offer some observations on these papers, in order to explain the matter as clearly as I can, which is all I desire, and which is all my duty calls on me to do;—you are the constitutional judges, and you alone are to decide upon them: though a gentleman at the bar stated he differed from the judges, if the difference related to the situation of his client, I am not surprised at it, but on that situation I shall deliver no opinion—I have heard it said that judges make very bad jurors—to your consideration, I am happy to say, the cause is referred by law, the verdict must be yours and not mine.

Gentlemen, the first position for you to consider (for that we are at war with France is obvious), is whether the society denominated Defenders did exist?—Next, whether the prisoner was a member of this society, and whether he was guilty of all or of any of the overt acts laid in the indictment?

I cannot pass these papers without observing upon them that it is for you to consider, whether this engagement is not to submit to a committee, and to pay obedience to its commands in contradistinction to the laws of the land. The association was formed so far back as the year 1790, the oath professes to be an oath of allegiance to the king, qualified with the expression "so long as I shall continue under his government,"—you are to decide whether the person who swore it, thought himself bound longer, and how far it is explained by the assertion of Weldon, that "if the king's head were to be taken off tomorrow, the obligation of this oath would be at an end."—You are to consider whether the "National Convention," means the Convention of France.—You are to consider what is intended, when the question is asked "with whom are you concerned?"—and the answer returned, "the National Convention:"—the words to "quell all nations and dethrone all kings:"—You are to decide whether they manifest the intentions of the association.

Another part of the written evidence is the parchment sworn to have been found in the possession of the prisoner.—This parchment contains the following form of oath, “I, A. B. in the presence of God, do swear of my own free will and accord.”—[His lordship here stated the oath verbatim.]—You are to determine whether obedience to the laws means the laws of the land, and whether courts martial are such as are recognized by law?—Part of this oath throws a light on some of this mysterious system, and explains, in my mind, the purpose of the signs used by the Defenders—for these signs must be understood that the members of this association may be able to discover themselves to each other. You, gentlemen, are to determine what F. and I. mean, and what interpretation reason must deduce from the substance of this parchment.

Having disposed of these parts of the evidence, which support the charge of adhering to the king's enemies, I will take up the first witness who appeared—I will read the evidence, you will not take it explicitly from me, but you will compare it with your own notes, and adopt it merely where it is conformable to them, and consistent with your own recollection. In stating it I shall meet with the assistance of my brothers, and if I am incorrect, I intreat you to set me right.

The first witness is William Lawler, he is a native of Ireland, &c.—[Here his lordship read the testimony of the witness.]

He next saw the prisoner at Stoneybatter with a society of Defenders—Hart introduced a young man in order to swear him a Defender, he explained the principle of the society, and told him the intention of it was, to assist the French when they should land. If you believe that the prisoner was at this meeting, that their designs were such as the witness described, and that the prisoner swore this young man according to the forms of the society, it supports a substantial count in the indictment, and you must find him guilty. It is proved that Hart pulled a book out of his pocket, that he laid a paper on it, that he administered the oath, that he showed the signs and described the meaning of them. What these signs are you have seen, the witness learned the signs before from Weldon, when he swore him a Defender, and these were the same signs which Hart made use of on that occasion. The witness swore—[His lordship proceeded to recapitulate the evidence.]

Gentlemen, you have been desired to look at the prisoner at the bar, and to consider, whether from his youth, he were likely to commit the crime with which he stands charged. I also desire you should look at him; and as to the circumstance of youth, I shall read you a case from one of the most respectable authorities, which elucidates that maxim of our law, that youth shall not be admitted to excuse those acts, the commission of which is attended with a malicious discre-

tion. From Judge Foster's report—a man who has done honour to himself and the profession—-I shall read you the case of Yorke, who, at the age of 10 years was convicted of murder.*

[Here his lordship read the case, with the opinion of the judges, &c.]

The principle I lay down is this, that if you believe that boy was capable of judging of the conduct, which he is proved to have pursued; there is not a single act which is not tarnished with a malicious—a treasonable discretion. He knew he was to support the French convention, in case they should cause this country to be invaded; he was intrusted with the flagitious importance of admitting Defenders, as a committee-man; he was sufficiently zealous in the cause, to prevail on the members of his society to bind themselves by oath to meet in arms on the night which he appointed. Every act of this kind is not the act of puerile indiscretion, but bespeaks the competency of a sensible mind, equal to the treason with which he is charged. You are to consider also, whether these facts are not strongly in favour of his innocence, if you believe the testimony you have heard to be the consequence of a wicked and malevolent intention to take away his life. If you shall be of this opinion, you must acquit him. It is said, that judges are very bad jurors; you, gentlemen, are the judges in these cases, intrusted and constituted by the laws of the country; I love to see the freedom of the country manifested in the discharge of every trust. It is the duty of the Court to be counsel for the prisoner, you are the judges of the fact, and you know—I mention it in consequence of an assertion at the bar—whether or not the prisoner has had fair play. It is by fair and candid observation, that a client must be defended, and if you should be base enough to suffer your judgment to be swayed by the direction of the Court, as jurors I should despise you, as much as I revere the institution.

It is true, that Lawler is an accomplice; if he were not, he never could have discovered what he explained of the principles of a society bound by oath to secrecy. How can conspiracy be so totally discovered as by the evidence of a conspirator? yet the stability of his credit remains subject to the observation, that he was himself an associate in the guilt, which was discovered by his information. If the testimony he gave were false and unfounded, it might have been easily overthrown. He states places, houses, names, numbers, societies, days; if the prisoner be innocent, what has prevented his having recourse to the common defence of an *alibi*? why did he not show, that he was absent from any one of these meetings, by proving that he was engaged in any specific business, that he was

* Yorke's case was cited by lord Clonmell in his charge to the jury on the preceding trial of Kennedy. See p. 386.

sick, or in the country, or employed in any other possible manner? What account is given of the prisoner? I am afraid to trust myself with the evidence, but I trust I have explained it in the most moderate, and dispassionate manner. The witness is not a pretended, or a careless accomplice, he has appealed to corroborated facts for every circumstance of his conduct, and assigned his reasons on every point of his informations.

But the case does not rest on the testimony of Lawler. Alderman James swore, he found every circumstance coinciding with the discovery he had made, not only consistent as to the past or the present, but confirmed by what Lawler told him was to happen in future. He found a meeting in the liberty, the purpose of which was explained. He also meets an association or mob at Crumlin, on the day on which Lawler informed him it was to be assembled. Godfrey, on arresting the prisoner, found a blunderbuss and twenty ball cartridges in his bed-chamber. You, gentlemen, will ask yourselves, what this boy had to do with a blunderbuss and ball cartridges?

A Juror asked, whether the uncle or any friend of the prisoner was in court?

Earl of Clonmell.—I do not find that he is, and if he were, the prisoner's counsel would have known whether they should produce him. Where is there any person to give an account of this transaction; or even to prove that the prisoner spent his time at home, and went regularly to bed?—

Here Patrick Hart was called, and the Solicitor General having waived the objection against producing a witness at this stage of the prosecution, he was sworn. He said, he believed the prisoner was his nephew, that he was his apprentice, was a boy of a good and loyal disposition, and he did not think him capable of committing the crime of high treason: the prisoner was never from his house later than 11 o'clock, the witness himself was seldom from home.

The Juror observed, he made the inquiry merely from motives of humanity, because he was led to think the prisoner was left friendless and destitute at that hour of the night.

Henry McCormack was then sworn: he follows the tin business, he knew the prisoner and his family, he knew him since he was apprenticed, he never heard any thing bad of the prisoner until this charge; his character has been remarkably good, if any thing material had occurred to its prejudice, he should have heard of it; he knew the prisoner these three years, and was well acquainted with his father, who lives in the county Meath.

Earl of Clonmell.—My wish to indulge the humane curiosity of the jury, and the youth of the prisoner have induced me to yield to the production of witnesses at this period of the trial:—had the prisoner been a man, I should not have done so, as there is nothing which would establish a more dangerous pre-

cedent, than the general admission of evidence to patch up a defence.

There are cases where evidence to character is of importance; when a fact is disputed and where oath is contradicted by oath, a general good character should often prove decisive. But in this case, is there a single fact sworn to by Lawler, which has been controverted? It is for you to consider the nature of that system of depravity, which has been proved; if you believe there is no such association, that there have been no oaths, that imputation has been cast where there is no ground for it, you are not like bigots and zealots, to say to yourselves, we are Protestants, and we are the persons who have been marked out for extermination; you should not give way to such impressions, but doing justice between God and your country, you are to judge whether there was such an association—whether those papers existed—whether with a traitorous intention the prisoner was a member of the society of Defenders. You must decide in your consciences what is the meaning of this test. This parchment was found in the possession of the prisoner; but do not therefore risk the conviction of a boy on a hasty conclusion of a treasonable design; banish all such ideas from your minds; but as rational men, do not get rid of your understandings. If you believe the prisoner guilty of all, or of any of the overt acts laid in the indictment; if you believe that this association existed, and that the prisoner was one of its members, and that he acted the part he is sworn to have acted, you must find him guilty; it is the verdict of your conscience; it is an obedience to your oath. If you believe, that he had this parchment without knowing that it was in his possession; if you believe that it was found upon him and you can consider it innocent; if you believe that it will not bear the meaning which has been affixed to it; if you believe that from any reasonable consideration, Lawler is not entitled to credit, you ought to acquit the prisoner. If this be a case where after all the observations, which have been made on it, you are still in suspense, under such a circumstance you ought to acquit him. The benignity of the law imposes as a duty upon the jury, when the balance is equal between the guilt and innocence of the accused, that they should indulge the sentiments of mercy. If under all the circumstances of this case, your minds remain suspended in doubt, let your verdict be a verdict of acquittal.

Mr. Justice Chamberlain.—Gentlemen of the jury; on consideration of the evidence which has been laid before you, I must confess, that it is with pain I address you. You have been told, that the prisoner stands charged with two distinct species of high treason. You have been informed, that adhering to the king's enemies amounts to compassing his death. He is not only bound from interest, but also is bound by

oath, to support and maintain the laws and constitution of the country. You know, as men possessed of common understanding, that adhering to the king's enemies, manifests an attempt to dethrone the king, and by construction amounts to an intention to take away his life. I shall therefore confine myself to the charge of adhering to the king's enemies. I shall not attempt to define this species of treason; but I do not know any act more explicit, than that laid in the indictment. It is impossible to conceive a plainer illustration of it, and instead of defining the offence, I shall point out the facts, as the best substitute for a definition. I hope, I do not differ from the gentlemen concerned for the prisoner, when I state, that adhering to the king's enemies is treason, though the intent should prove abortive. Thus an intercepted letter is evidence of a treasonable purpose, as was determined by the court of King's-bench, in the case of Jackson, whose treasonable designs were not accomplished. If nothing could be considered treason, which did not succeed, no man could be brought to punishment until the government of this country be subverted, and it would be then too late to call him to an account for offences committed against a system which was annihilated by his exertions. In this case, taking the evidence to be true, it amounts to plain, obvious, explicit treason, as ever entered into the head of man. The charge is adhering to the king's enemies; I think the whole of the evidence comes to this, that the prisoner associated with Defenders for the purpose of dethroning the king, and affording assistance to the powers of France. Did not the prisoner become a Defender for the purpose charged in the indictment? The first point you are to consider is, what are the motives of this association? You have heard two papers read in evidence, on the tendency of which you are to decide. Lawler swears that they were the instruments exhibited, when he was sworn a Defender by Weldon. You may observe, that one of them is a general precedent; it binds the person, who swears to observe it, to be obedient to all committees, in all lawful matters; part of it professes to be an oath of allegiance to the crown, and as it has been observed at the bar, that every subject is bound in allegiance by the ties of natural justice, this oath, far from ascertaining that the allegiance of the subject to the king should continue as long as they both shall live, abridges the duration of it, by the words "so long as I shall live under his government." If there be any thing ambiguous in it, you will find the explanation in the catechism, the question is, "what are your designs?" the answer, "to quell all nations and dethrone all kings." It would be a farce to say—and it has not been attempted to be denied—that a profession of this kind is an act of adhering to the king's enemies and assisting the powers of France. It is true the prisoner was not present when Lawler

was sworn, but it has appeared, that he gave him the signal similar to that which the witness has been taught by Weldon, when he was made a Defender. This is some evidence to show you that Hart was privy to the designs of this association, and it is a reasonable conclusion, that every man entering into a society is acquainted with its principles. It is plain from the parchment, that the Defenders were associated with the powers of France. See what it is, "and I of my own free will and consent do swear to be true to the present united states of F. and I." From the context it is impossible that this should mean any thing else than France and Ireland. Gentlemen, in whose minds are France and Ireland united? you know they are at actual war; you must see they were united only in the breasts of traitors; no man without the consent of the crown can unite them, and if this be the test of Defenders, they must all be traitors.

Gentlemen, at a period when the country is involved in a most distressing war, for what purpose, can those men unite to take away arms from those who would defend the kingdom, in case of an invasion, except for the design of murder, or of treason? It is wasting time to prove the conduct of the prisoner to be treasonable, and if Defenders collected arms with the intent of contriving to wage war against the king, it is impossible that any rational man should hesitate to say that they must be traitors.

The question for your consideration is, whether the prisoner was a Defender, and whether he became such for the purpose of adhering to the king's enemies. This depends in a great measure on the evidence of Lawler, and you must be positive that the prisoner was aware of this intention—Lawler is not positive that Hart was at the meeting in Plunket-street—he was at Stoney-batter, where he brought a young man and swore him a Defender, declaring when he administered the oath, that the principle of the association was, to assist the French when they should land. At this meeting it was that he bound the members by oath to assemble in arms on the succeeding night. In fact he appears perfectly possessed of their secrets, and acquainted with their proceedings. The second meeting was in the Liberty where he had a young man who he told the witness was a Defender—on this night he gave powder to the witness and desired him to make it into ball cartridges. At Drury-lane he spoke of the Defenders intending to rise in order to massacre the Protestants, so that if you believe the evidence he was not only conscious of the scheme, but entered sincerely into the project. This will also be material in obviating the objection of youth, it bespeaks a craft and treachery beyond his years, and proves him to be capable of a treasonable discretion. If you believe Lawler, the prisoner was a Defender and conscious of their de-

signs. But the case does not rest here; he told Godfrey he was sworn a Defender by force, and had the parchment put into his possession against his consent; if a man be waylaid and trepanned, God forbid his conduct should be criminal but if you believe the evidence, you will find it as certain, that he was a party to the cause, and acquainted with the design.

If he had proved by evidence that he was sworn by force, it would be conclusive of his innocence, but the conduct of a man sworn by force would be, that he would immediately disclose the circumstance to a magistrate.—Perhaps it may be imagined that from the youth of the prisoner, such an idea would not arise in his mind; but would he not at least have complained to his uncle of the outrage which was offered him, and been able to give evidence of the circumstance on this trial? I recollect that his uncle was produced, and, and no question of the kind was asked him. You are to judge whether the blunderbuss found in the bed chamber of the prisoner was in his possession, and if you think so, the circumstance looks suspicious. These are the most material considerations for you to attend to in this part of the case, namely, whether the prisoner was sworn by force, and you will also observe how far his conduct is consistent with this idea.—If you believe he was voluntarily sworn a Defender, and that this parchment was entrusted to his care, it is persuasive evidence of the truth of Lawler's testimony, and the case will not rest on the oath of an uncorroborated approver. I admit it may be perilous to convict on the unconfirmed testimony of an approver, but Lawler is not a witness of that description; it is true, he was an accomplice who made a voluntary discovery; and the history of all conspiracies informs us, that conspiracy cannot in general be detected, except by the information of a conspirator; nor is there any thing unnatural in the position, that those who betray the state, will be ever ready to betray each other.—Whenever, therefore, the evidence of an accomplice is confirmed by circumstances, its sufficiency is incontrovertible. Under the law of England, which requires two witnesses in cases of high treason (whether the law of Ireland differs in this respect from the law of England, is a question on which I shall deliver no opinion) the evidence of two accomplices is sufficient to convict, and in my judgment the evidence of one accomplice, corroborated by circumstances affords a more rational ground for conviction. If you think the prisoner so extremely young, that he was ignorant of the nature of his conduct, you ought to acquit him, and if you shall do so on this principle, I think you would do well to mention it. If you think that his having been forced to become a Defender is a falsehood, the defence itself is evidence of craft, and you ought to find him guilty. If any doubt remains in your mind, it is your duty to acquit him.

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Mr. Baron George.—Gentlemen of the jury;—I shall trouble you with very few observations. I shall only remark on the charge against the prisoner of adhering to the king's enemies. If you believe he became a Defender with an intent of assisting the king's enemies, and dethroning the king, or for either of these purposes, you ought to find him guilty. As to the species of treason he is sworn to have committed, I shall observe that the Defenders were associated for treasonable purposes, and that the prisoner became a member of their society with full knowledge of their designs—that these designs were treasonable, you will find from the papers which were read in evidence—from one of them you will discover that the Defenders were associated with the French Convention, to dethrone all kings—you will find the origin of this society so far back as January 1790.—It appears that they had committees and officers whom they were sworn to obey.—From the parchment you will find them bound by oath to be true to France and Ireland;—you will find them bound not to associate with robbers, and still more not to give evidence in a court of justice against a member of their own society. If they were not associated for robbery, where is the necessity of secrecy?—If it be plain they were not associated in order to commit robbery, you then will ask yourselves whether they were not united by treason?—All the legal powers of France and Ireland are at war, and the two countries are united only in the breasts of traitors. If you are satisfied that the society of Defenders is a treasonable association, you are next to consider whether the prisoner was one of that association.—The testimony of Lawler and Godfrey, corroborated by written evidence, has been laid before you. There is no doubt that the evidence of an accomplice ought to be received with caution: but whenever a jury is satisfied with the truth of it, it is sufficient to convict: but it ought to be received with circumspection, as it is often admitted from necessity; because if no such evidence could be adduced, the greatest crimes might be committed with impunity, and no nation could be secure from treason, which shuns the light and is fostered in obscurity.

Some reflections have been cast on the moral character of Lawler—surely no man who obeys the dictates of religion can be a traitor, and calling this man infamous is stating no more than what he himself has admitted.—Still there is something particular with respect to the testimony of this witness which adds a degree of credibility not ordinarily annexed to the testimony of an accomplice. The counsel for the prisoner have been instructed in every circumstance of what he has proved, because the evidence of this man given on a former trial, almost similar to the present, has been published, and yet no man can be found to controvert what he has sworn. His testimony was disclosed months

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before the prisoner was put on his trial, and yet it remains uncontradicted. Consider whether it is within the compass of ingenuity to fabricate such a system, and to support it with consistency!—this should be a circumstance for your consideration if his evidence stood alone on its own credibility uncorroborated by circumstances, but it is confirmed by subsequent facts corresponding with his information. When Godfrey went to arrest the prisoner, he received directions to search him, and in his pocket he found the parchment which has been read. You will consider whether he became possessed of it in consequence of the accident which he stated—you must consider how far it is probable, that a man never from home at a later hour than eleven o'clock, should be seized by force and sworn in the manner he described, and have this *muniment* of treason entrusted to his discretion.—An honest man might be involuntarily sworn, but the obligation of such an oath is nugatory and vain, and it would be not only the duty, but the inclination of any honest man to withdraw himself from such an association, and to manifest by his future conduct, an abhorrence of its principles. It appears suspicious that in the bed-chamber of the prisoner were found implements with which that oath was to be carried into execution. This circumstance gives an additional weight and probability to the evidence which it would not otherwise possess.—You are to receive the testimony of Lawler with caution, but you are not at liberty to reject it. You are bound by every duty, human and divine to investigate the truth. You are to consider the truth and the justice of the case.—Other considerations are in other hands.—You have a sacred trust to discharge to the public.—If no doubt remains in your minds, you must find the prisoner guilty.—if you have any, you ought to acquit him.

The jury retired at half past one o'clock on Thursday morning, and in about ten minutes, returned with a verdict finding the prisoner
—GUILTY.

Friday, February, 26th.

Edward Brady was put to the bar for the purpose of being tried upon the indictment for high treason found against him (*Vid. antè*, p. 355)—After the panel was called over, it was intimated to the attorney general that the prisoner was disposed to acknowledge his offence, and throw himself upon the mercy of the Crown.

Mr. Attorney General.—My lords, I understand that the prisoner looks to the crown for mercy.—Sure I am that nothing can fill the royal breast with more true delight than to extend mercy where any thing like repentance appears; and the officers who prosecute for the crown will feel much pleasure in assisting its benignity under such circumstances.—The

prisoner had early manifested a disposition to repentance; but now and again his wavering mind fell back, and did not adopt any settled determination.—My lords, I shall not proceed upon this trial, and therefore move your lordships that the prisoner be remanded.

The prisoner was accordingly remanded, and directions were given the sheriff, that he might be without irons, if he could be safely kept.

Upon a subsequent day the prisoner was brought up and his counsel moved, that his trial be postponed until the next commission.

Mr. Attorney General.—My lords, I consent to this motion, and that the object of it may not be misunderstood, I mean to have a pardon made out for the prisoner, so that he may plead it at the next commission.

Saturday February 27th.

The grand juries of the city and county of Dublin were called over.

Thomas Kennedy and Patrick Hart were put to the bar.—Their indictments were read, and they were severally asked, why judgment of death and execution should not be awarded against them according to law.

Thomas Kennedy.—I hope from the recommendation of the jury that you will have compassion upon me, and I hope for a long day.—A man who was not recommended had twelve weeks.

Patrick Hart.—You have been so merciful to Brady, who is charged with the same offence, that I hope for mercy.

Earl of Clonmell.—You, Thomas Kennedy, and you Patrick Hart, and each of you stand convicted upon indictments for high treason under the statute 25 Ed. 3rd, in compassing and imagining the death of our most gracious sovereign lord the king, and also adhering to the king's enemies. A plain overt act of the intention of levying war, or bringing war upon the kingdom, or inducing the enemies to invade it, is settled to be an overt act of compassing the king's death. Acts such as I shall mention, which appeared from the evidence to have been committed by you, never have been doubted to be overt acts of treason;—nor is it necessary, that you should have carried your schemes into execution, because that would have defeated the justice by which you have been brought to trial. You have each been found guilty by separate juries of the most respectable citizens in this metropolis. You have, each of you, taken all the advantage that the peculiar beneficence of our law has granted to persons in your situation, and you have challenged such persons, as either from secret knowledge, or personal dislike, or any other motive, you objected to. You have had counsel assigned to you of your own choosing,

and you have had a long time to prepare for your defence. You have had the assistance of your counsel in the amplest way. You have been prosecuted, as your own counsel have admitted, with moderation—with moderation, decency, and temper.—You have been tried I hope, with calmness—with patience—with humanity and justice by the Court;—with every advantage to each of you, which the law and constitution of the country allow, and every indulgence which the Court could extend, or which you desired, during the course of a long examination, which was observed upon with the utmost latitude by counsel.

The evidence upon which you have been found guilty left not the least doubt in the breasts of either of these juries. If there had been a doubt in either, they were expressly charged, in case of such doubt, to acquit; and the recommendation they gave shows the humane temper of their minds;—for they have annexed their reason that it was not on account of any doubt of the guilt, but of your youth.

You have been found guilty, each of you, of uniting yourselves with treasonable associations in this country;—the objects of which are avowed, open, and plain, to persons of the most inferior understanding—of one infinitely less than you have disclosed in the few words you have uttered. Upon each of you was found written evidence which cannot be doubted—written evidence that proves your guilt, and speaks for itself.—It professes to be a voluntary oath taken to support—not the law of the land—but the National Convention of France, for so the jury have found it. The object of it was to destroy not only his majesty, but all kings—to be true only to your own association. These two papers, the oath and the catechism, carry upon the face of them intrinsic evidence of your guilt, and show clearly what your object was,—that it was to support a French invasion, if the French should invade this country. It was proved to the clearest conviction of the Court (not one of whom ever mentioned an opinion before while it was possible it might do you harm with the jury that you were first members of the Telegraphic society) you then passed under another denomination, grounded on the affectation of philosophy, the Philanthropic society; then you became Defenders, and you disclosed their object. It is manifest that you knew by what ceremonies they were instituted—you knew they must continue, if at all, by robbery—by house-breaking—by plunder—by treachery—by murder and by treason. All these wicked, and flagitious offences are comprehended under the name Defender, as is manifested by what is proved upon you. Your system was to go out with such arms as you could get, or had got by robbery or other means, to plunder houses in the dead of the night and during the innocent sleep of the in-

habitants. You bound people by oaths to bring their arms, for the purpose of procuring more. It has been proved, that you made subscriptions to buy gunpowder for the same purpose, and when you had collected arms in this manner, it was proved, that you intended to assist the French, now at open war—that you intended to assist them in the invasion of this country, when they should attack it; and it was proved upon you, that the purpose of the association, wicked, and flagitious, and rebellious as it is, formed in the very bowels of this country, was to have made a general rising—to have massacred the Protestants of this country—to have taken the corn and provisions—to have taken the forts—plundered the banks—seized the arsenal—and made an attack upon every fortress in the kingdom, to assist the French in the invasion of this your native country, and you were to become the masters of the island.—It was proved upon you in the clearest way and in the most consistent, I ever heard. You were assembled, not accidentally in this place, or the other.—It was proved, that you were in Cork-street—that you were at the assembly in Drury-lane—that you were at Stoneybatter—that you were in Barrack-street—at Plunket-street—at Crumlin. In all these several places described with accuracy, and pointed out with such clearness, that there was scarce a title stated by Lawler, which might not be contradicted if not founded in fact, and which is not fortified by such circumstances as scepticism cannot disbelieve, nor rational men deny their assent to.—Twenty-three are stated to have been at one meeting,—more at another. It was sworn, that one of you declared there were 4,000 Defenders in Dublin, and the use which was to have been made of them justifies the assertion. If you could collect them, the system was artful, and practicable, and too likely to succeed. Numbers of your age were selected, I take for granted,—and even that appeared,—by persons elder than yourself—you were made Committee-men to give you a consequence in your own minds; you were empowered to swear new Defenders, to give you a degree of active importance. You, and each of you were active persons in that part which was most fitted for you—you could read, and write, and you were under the conduct of Burke, a man notoriously of infamous character, who had circulated his doctrines to his own disgrace but not yet destruction, publishing with his name atheistical treatises to justify his conduct. And this was the artful expedient made use of, by instructing you not to believe the power of the Almighty, or the doctrine of rewards and punishments, to make you as wicked as human creatures are capable of being, and then alleging, that you are not to be believed if one of the party should give information against the others. The system was conformable to the French philosophy—“I will debauch their principles, and their minds, and if any man be weak enough, or in

the general sense of mankind honest enough to betray us, we will show, he is not to be believed upon his oath, having denied the existence of a God, which we had taught him to do," and thus you would protect one piece of wickedness by another.

Again, say another dangerous part of the system. They resorted to the youngest persons they could find, active and fit for their purpose. "We will put them," said the advisers, "into the departments, that will gratify their young pride, and the unthinking youth shall be made Committee-men—they shall consider themselves officers, and if they be detected, their tender years will melt the hearts of the jury, who will sacrifice justice to the known humanity of the country."

Here then was the second part of the artful and wicked advice by which this system of treachery was carried on. Burke was to be one of ten—it was proved, that each of the ten was to levy ten, and each of the last ten was to levy five more—thus to make a body of 600;—each man was in some degree in point of justice and good faith responsible for the persons levied by himself. It was sworn to the satisfaction of the Court and jury, that the design was by dressing these men to the amount of 100 in scarlet uniforms to persuade the citizens into a belief, that the army was with the insurgents, and by this imposition and craft to plunder the Bank, and secure the arsenal.—Was that absurd?—No such thing. What did you want to effect it?—Nothing but ammunition and arms. It was sworn, that you tried other means, that of robbing the houses of individuals; and as the strongest proof against you, upon you, Kennedy, were found the oath and the catechism; and upon you Hart, when surprised early in the morning, was found a parchment writing, beginning "I, A. B. do swear to be true to France and Ireland,"—for so the jury have interpreted it,—and then it proceeds in the same traitorous language as those found in the possession of you, Kennedy. A blunderbuss and 20 ball cartridges were also found.

But it is said, why, this is impossible, to make a rebellion of boys. See what the answer plainly is. It is admitted, that there has been a conspiracy—that it has consisted of great numbers, and yet hitherto few or none have been secured, through the influence of these illegal and detestable oaths administered by boys. Does it not then bring this unhappy reflexion, painful to every mind, that it is a conspiracy from which we cannot preserve the youth of the kingdom:—It has gone so far as to corrupt our apprentices; and it is not poverty, distress, or oppression, which has given rise to it. There is not a man, sworn against as forming this conspiracy, who does not appear to have had a trade, and means of living—a trade and means of living depending upon the elegancies of elevated life, and not by the necessities of society. One appeared to be a carver, another a gilder, another a

glass-cutter, &c. There have been others of more adult years, connected with societies, not a great way removed from guilt in their breasts and minds, though not indicted for what you have been tried and found guilty. This is not a subject taken up on a sudden; you have had the same able and legal assistance, as to one of your counsel, whom you named four months ago. There was not a word of Lawler's evidence which was not known for some months;—it has even become the subject of publication. Yet not one word of it has been contradicted to this hour by any man—by friend or parent. It appears you are not abandoned children, or forlorn, without some persons to look after you. Your guilt has not depended upon the mere assertion of one man. On the contrary his evidence stands supported by circumstances and facts, that cannot mislead any mind in the progress of truth. It appears that Lawler said, "go take Kennedy; you will find the Defender's oath and catechism in his pocket."—He had seen it frequently before, and thought it probable it might be found, where he saw it deposited; and there is no attempt to show any sort of compulsion, or contrivance by which those papers were put in by Lawler, or any person for him. When you, Kennedy, were arrested, these papers were found upon you; so that not only what Lawler said as to the past tense but also the present is fortified by different facts. And when you, Hart, were arrested, this parchment was found in your possession; not indeed from any information given by Lawler; it does not appear, that he knew of it; but it is evidence to establish one of the facts charged against you as a Defender, which the jury have found you to be.

I shall speak a word of your age. From the necessity of supporting human society, and of preventing flagitious crimes from being unpunished when perpetrated by youth, courts have resorted to printed cases, where judges have determined, that younger persons than you, perpetrating crimes ought to be punished. In the case of murder, a person of the age of ten years, was sentenced to capital punishment, and the reasoning of that case will go down to the lowest age, where a malicious, mischievous intention appears. And in truth it would be absurd, if it were otherwise.—It would be to say, that certain classes of people in society are able to commit the worst offences, and yet the law cannot reach them. By your industry and activity, if the evidence be true—as the jury have sworn they thought it, and we have no reason to doubt it—it is now to be taken for granted, that you thoroughly understood every part of the wicked treason you were embarked in. I mention this to show, that there is no part of society that is not the object of legal punishment, even to the forfeiture of life.

This being a short view of the facts, recapitulated in the manner usually stated by persons in my situation, I must now put you in

mind of the horrid offence and wickedness of which you have been guilty. I suppose there is no rational creature, that has heard what I have stated, who will not go away convinced, that the evidence is plain, clear, and coercive. There has not been a single fact contradicted, or explained in your favour, and that the matter of these papers found in your possession is most flagitious and detestable, cannot be denied.

The salvation of this kingdom has, under the Providence of God, been secured by the information given by one of yourselves, by which your bloody, and treasonable designs have been defeated, and prevented. For if you had succeeded in your abominable projects against this kingdom, instead of its having been, in the time of a ruinous and calamitous war to every other part of the earth the most fortunate spot on the globe until 1790, it would have been the miserable scene of carnage, like France, the place from whence you expected friends and assistance.

The punishment of our benign law not being for vengeance, but to deter others by example, has led me to expatiate upon the evidence, and the nature of your crime, your situation, and circumstances, and the danger to which the kingdom was exposed if the design had not been providentially revealed by the information of the prosecutor, more at large than perhaps I would have in another case. But it is right, that in the publication of this trial, the eye of the public should be open to a full view of their own situation. Persons who have been involved in these conspiracies should guard themselves against the mischiefs of high treason, by being publicly apprized of the punishment attending upon it.

You have in another instance wounded the peace of society extremely. You have in the progress of your wretched and treasonable pursuits thrown a cloud of suspicion over your connexions and your associates, which can never be dispelled but by their most explicit good conduct; for if any person formed the most distant conjecture of your views, every such person has been guilty of a gross misprision, by not disclosing them, so that they might be best guarded against, defeated, or prevented.

It is a painful part of my duty which yet remains, and that is to pronounce the dreadful judgment of the law upon you, which has been considered by the Court.

[His lordship then passed sentence upon the prisoners, in the manner usual in such cases, after which the prisoners were remanded.]

After the prisoners were removed, his lordship addressed the grand juries.

Earl of Clonmell.—Gentlemen of both Grand Juries;—In addressing you, I mean only to give you that preference, which the law has given you, by thinking you the first

auditors of what has passed. What I said, and mean to say, if I did not think the occasion called upon me to speak to you, and through you to the people now assembled, I might well be excused from this trouble. It is a painful task. I hope in God, it may be attended with the consequence I expect. I thought it might involve considerations of too great extent to comprehend it in the lessons I was obliged to give the prisoners. I therefore restrained myself, meaning to address you. Many are here collected, of different ages and various degrees; some entrusted with the highest places which the constitution knows. I thought if any thing could be done by calling the attention of such an auditory, by calling them to a sense of their situation, this would be the most useful hour of my life. This subject of which you have heard so much, is a prosecution, conducted by the servants of the state in the manner which you have observed, and involved in the length of time you have perceived. My objects are two-fold. First, to show what I think (and it is a satisfaction to find that my ideas correspond with those of my brethren) of the probability of the charge made by Lawler; and next, if I can, to exhort you to a manly exercise of your duty as magistrates and subjects.

Gentlemen, as far back as the year 1790, and several years preceding, I suppose there was not a country upon earth, that felt itself so fortunate a progress of prosperity and advancement as Ireland. At that period commenced—and it is so stated by written evidence—the institution of Defenders,* though perhaps under another name, for the oath states their institution in 1790, with improvements since. The country has been since involved in three of those calamities, that each of you, who do your duty to God, pray to be delivered from, namely, from “sedition, privy conspiracy, and rebellion.” I am speaking of facts of notoriety. It began with sedition; and the simple and inspired line which I have quoted, with a knowledge of the human heart, makes the other two follow, viz. privy conspiracy and rebellion. It is from these, I hope, God will deliver you. At that time, a fugitive traitor, Hamilton Rowan,† who had for sedition been imprisoned, and was connected with that self-executed traitor, Jackson,‡ and some other fugitive felons, whose names it is not necessary to mention, had begun to vitiate and debauch the minds of the country, and from that time to this it has never rested—French names and proceedings were adopted—treason was the object—murder the means. In 1791,

* The origin and progress of this association may be traced by referring to 2. Plowden's Historical View of the State of Ireland, pp. 300, 375, 385, 436, 460, 531, 544, 569.

† See his trial, *antè*, Vol. 22, p. 1033.

‡ See his trial, *antè*, Vol. 25, p. 783.

William Lawler, who has since appeared as a prosecutor, having learned a trade, by which he appears to have got a reasonable and comfortable subsistence, left this country, and went to England, where his father had been—he enlisted as a soldier, and having deserted from that situation, changed his name. I will show you that love of life, the dearest object of human creatures, has been the original director of this man's conduct—that he discovered to save his life, and not before he thought his life was in danger, and that not from the law, but his own associates.

He went to London, and there under the name of Wright, he got into one of their treasonable Corresponding Societies. I speak from his own description of it. I am not a judge of that country, nor am I to try any of them. But his description was, that they were to force a reform by arms brought to the throne. He was asked, if he had room to conceal 100 arms, for that it was as necessary for them to learn the use of arms as well as the society of Sheffield, who had it in contemplation to force a radical reform.

Now, take up the first part. Is it improbable, that men in the army should be resorted to?—the thing speaks itself. Is it improbable, that a man who deserted, should change his name to prevent his being detected?—the thing speaks itself. While in London, he is directed to a man of notorious name, Daniel Isaac Eaton,* who recommends him to Rowan, at that time not thrown into gaol. Lawler got a letter under the name of Wright to Rowan, to whom he told his real name, and the very masque was a sort of recommendation to such a man as Rowan. I speak without reserve of a man, who has quitted the kingdom, and stands outlawed and attainted of treason. Was it likely he should object on account of the fiction of name? He makes Lawler a present—of what?—of a print of Thomas Paine, the saint of rebellion, anarchy, and murder! Proud of his present, he follows Rowan into the gaol of Newgate:—there Rowan discourses with him upon the propriety of having corresponding societies here, similar to that in London. Is there a tittle of that improbable?—or at which the mind revolts?—that a person, coming into this country should endeavour to circulate those opinions and principles he adopted there. "Get six staunch men," says Rowan, "whom you can depend upon. I would rather have them than 600 others—see what has happened to me—I have been discovered by those who were not staunch." If this was idle talk, founded in imagination and wicked lies, it might be contradicted by those who then attended Newgate. Lawler next becomes a member of a society, called the Telegraph, which opens, by degrees, more largely into

the Philanthropic. These were headed by whom?—By Burke—a man, notoriously of infamous character, expelled from the university for abominable blasphemy and impiety. Where is Burke? Why not contradict what Lawler said? No person pretends to say, he is not in existence. But it may be said, he is afraid. Why is he afraid?—he ought not to be afraid, if he be an honest man. If he be an honest man, why not contradict this account?—but it does not depend upon Burke alone. Lawler states a number of persons by name. He was himself a zealous Defender—his religion, Protestant, and he frequently attended the methodists. He was apparently an enthusiast to his purposes—going as far as the Defenders did—and for what?—in order to establish a republic. He was employed to levy forces, he did levy them. He levied his ten men. Was this improbable? He had been a soldier—he enlisted his ten men, according to his promise to Burke. Is there any thing in that at which the mind revolts? What is next to be done?—they collect together, not in one place only, or secretly, but in several. He attends; he describes the places most accurately. Twenty-three met in one place; he mentions most of their names, Cook, Dry, Coffey, Galland, Atkinson, &c. These were my associates. Were they?—They are fugitives in guilt, and conscious traitors—why do not some of them come, and contradict what this man has sworn? What is next done?—after he stated who were at Dry's, he mentioned several other places, and particularly Plunket-street where Defenders met, and where subscriptions were made for buying gunpowder;—the waiter was a Defender, and therefore took care, not to let strangers in. Is there any man to contradict this? Honest men need not be afraid to allege the contrary, if the facts were not so—any of the family could prove it, if it were false. The prisoner might say (if the fact were so), "I was in bed, and will show it—we were not at Dry's, or we were only three in number." The witness mentioned several housekeepers—is it not a challenge to the whole city of Dublin to give evidence against these assertions?—"Let me see, if there be any man to contradict me." What does he say next?—he uses language that must bring certainty to every mind—"I liked the prisoner as a Defender." There is no evidence to show he had any quarrel with these people. He was himself a faithful Defender, as they thought. One of them told him, if he was asked what religion he was of, not to say he was a Protestant; accordingly he said he was a Roman Catholic. Upon that confidence, Hart calls him into a window, when they were assembled at Drury-lane, and says, "you know that Coffey, the chairman, what religion is he?" "Why do you ask me?" said Lawler.—"Because," replied the other, "if I thought he was a Protestant, I would not keep him company, and I tell you, that

* See his trials in this Collection, Vol. 22, pp. 753, 785; Vol. 23 p. 1013, and A. D. 1812 post.

the intention was to make a general rising on such a night, but we considered, that if we did it, before the harvest was got in, we might be starved, but as soon as that is done, we will make the attack." Then indeed, it behoved Lawler, who had changed his name to save his life, to take care of himself—"they will find out, that I am a Protestant, and it is necessary I should save my life." Is there any thing improbable in that? Let me be understood to say, that they were to be destroyed by Defenders and ruffians, traitors and rebels. Does this cast reflections upon the good subjects of the kingdom? No such thing:—God forbid!—I wish to make every man zealous, bound in point of honour as well as conscience to support the cause of justice and of his country against ruffians, against plunder, violence, murder, and treason; and if you adopt the means which I shall suggest, I will show, that in a month, if you do your duty, there will be an end of Defenders and of treason. It is a bold promise. It is a promise founded on my conviction of the integrity and spirit of Irishmen and all classes of them. Let me proceed, however, with the conduct of these men. With respect to Kennedy, the Defender's creed is found in his pocket; it was found, where the witness had previously said it was. Why, to talk of his not deserving credit after that, would be to suppose men were made up of idiocy, and phrenzy. If you find your watch in a man's pocket, would you disbelieve the man, who had previously told you it was there. To doubt then the evidence as to Kennedy would be to make you the most stupid animals, without sense or motion. Then what is found upon Hart?—not indeed what Lawler knew to be there; but there is found in Hart's pocket, at his uncle's house, in a room up stairs, this notable magna charta of Defenderism and treason, in more strong expressions than either the oath or catechism. It speaks as treasonably, as rebellion or treason could make it. France and Ireland are called united states!—It was well observed by one of my brothers upon the trial, "how united but in treason?"—You may as well unite fire and water. The two nations are at war, and can only be united in a bond of wickedness and blasphemy, rebellion and treason. So that finding this paper upon Hart would alone show, that every word said respecting him was true. But does it rest there? No: for in the chamber of these infants, as they are called, dressed out so for the occasion, there are found a blunderbuss and 20 ball cartridges!—Then it is said will you pass sentence on infants?—I have known juries long: I have never known above three instances where they were mistaken. How are these juries taken?—from the body of the city. Was it a parcel of grandees?—no such thing. Each of these boys, by industry, and diligence might in the course of a few years, be as great and as grand as any of those who tried him. What then was found?—a blun-

derbuss and 20 ball cartridges! Is this the innocent skinner's apprentice, with a blunderbuss and 20 ball cartridges in his box!—Gentlemen, parents do not do their duty—magistrates do their duty ill—masters still worse—Neither their duty to God, their consciences, or the public. Did they but see, where their apprentices, and those employed about them consumed their time, and what company poor lads, taken from their parents, and left with those who should teach them religion as well as trade, frequented, the mischief might be prevented. Can it be imagined, that if masters did their duty, such a system as now prevails, could continue for a week?—No. But what do the masters come here to say?—not to contradict the witness, but to say, they do not believe him. One man was a member of a reading society. A master tailor, 36 years of age, and a father of a family, reading Pope's works and a Dictionary of Sciences! "I attended a reading society—it became the Philanthropic Society, and Paine's Age of Reason was the object of our studies." Is this the way in which the honest and well deserving tradesmen and artificers of the city of Dublin should be employed? If masters were employed as they ought, would apprentices be employed as they ought not? Another witness produced on behalf of the prisoner was a man of the name of Robinson, and very unfortunately, I find an indictment against him. I do not presume him guilty;—but he is indicted—for what?—for publishing caricatures—an odious mode of obtaining a livelihood. Who is the next witness produced?—the landlord, who found him honest, industrious, and diligent, but said he did not deserve credit, because he used to work upon Sunday, and did not go to church. Who is the next person brought to impeach Lawler?—Galland, who became a grocer from an hair-dresser, and who Lawler proves had given him a pistol, knowing what use was to be made of it. The pistol was brought into court. My God; then is it necessary to go into a deep and laboured refinement to satisfy you, that every thing which has been said hitherto is deserving of credit?

It is said, and it was argued upon ingeniously, that a man having no sense of religion, who thought of putting the king to death, who deserted, who was charged with petty thefts and was faithless to his own people, are you to believe him?—The answer is plain—you find that the man entered into a wicked association, and when it came to touch his own life, he quits it. Under what circumstances?—Not as an approver. He was not sworn against. Not a man of the whole gang was sworn against. He came and gave information to him in whom he thought he could confide. He then goes to alderman James, tells him of the situation of affairs. An assembly was to be had; and their object was communicated. The magistrate meets 3,000 people. In answer to a question, put by

the prisoner's counsel he says, he believes their object was, to attack the Bank, plunder it, and take the arsenal of the Castle. Is that a reason why Lawler is to be disbelieved, because he is confirmed by a magistrate of the city of Dublin as to part of the information he has given?

Again, as to Crumlin: a meeting of Defenders is held there---that will be the time, says Lawler, to rescue me---and that is the time, he first openly abandons the association. If he were a liar, is there any thing more certain than that he could not muster 3,000 people? What then prevents you from yielding to every rule of probability confirmed by testimony that cannot err?—For so it is with respect to what has been deposed by Carleton and Godfrey; all confirming every tittle and every circumstance passing from this man's lips.

See it, in another light. It is said he concealed part of what he should have discovered, namely, the abominable design against the chancellor. He did so. But it appears there was such a design. To be sure, a man who was not shocked at the idea of destroying the king, would not be shocked at the scheme of destroying the chancellor—but he was shocked at his own danger,—and is this improbable, that they designed mischief against that great magistrate, whom they afterwards attacked, and were near destroying in the open streets? Therefore you see that probability follows this witness, as a shadow does the substance, fully establishing the truth of his narration.

Now, as to another part of the case. One of these Defenders was tried three months ago. The evidence was very nearly in terms the same, with regard to the Defenders, as has appeared against these two boys. Three judges attended upon that occasion;—men, whose characters, if some of them were not present, I would minutely describe, men of temper, of high reputation even before they got upon the bench—they try and approve of a verdict against Weldon. One jury acquitted Leary.—Why? Because the only time he went among them, he was drunk. In such a state, any man might have done the same. But then a clamour is made through the country, “are the lives of subjects to be taken away upon the oaths of atheists?—A fly's wing ought not to be hurt by his testimony.”—See what was done: the judges postponed the execution of the man, to let in time as much as possible to see whether subsequent events would produce any different evidence. Time is given, assistance is had, and every opportunity upon earth is allowed to bring light upon the subject, and discover whether the witness were a liar. What is the result?—a confirmation of every tittle. But there is another circumstance:—two or three of the jury in the latter cases were upon the jury who acquitted Leary: it was to their honour; though perhaps in such

cases, honour should not be spoken of. But it so happened, that some of the jury who acquitted Leary, were upon the jury who found Kennedy guilty. So that with every prejudice which they might have derived from Leary's case upon their minds, after a trial which took up thirteen, or fourteen hours, they came back in ten minutes satisfied that Kennedy was guilty.

Again, I had the good fortune to be assisted by two of the judges, who presided in the former cases: they brought their notes into court with them, and, as was their duty, compared those notes with what appeared upon the latter trials, in order to discover whether there was any inconsistency. It is the fashion now to publish every thing. The former trials were published; every thing met the public eye, and still every thing is confirmed:—what was sworn to before, was sworn to again, and no part is contradicted.

I shall take leave of this part, convinced in my mind, and satisfied in my conscience, that the information of the witness, upon every part material to the trials, was founded in truth. I shall end this part with this observation.—It was sworn, that they intended to have put to death the jury who found Jackson guilty. It was not improbable, that they who designed to murder the king and the chancellor, would have murdered a jury. When the last jury heard what the witness said, it required manliness to find a verdict of conviction after such a menace; they were convinced by facts, and they scorned to entertain any fear. They heard what might have alarmed weak minds, little, weak, traitorous, minds. A juror might have said, “I will not put myself into that situation,”—on the contrary, they came in manfully, in ten minutes, finding a verdict of guilty upon their oaths and their consciences.

But after that, each jury did recommend the prisoners, as objects of mercy, and assigned their single reason, that it was on account of their youth. I then said, what I now repeat, that I would communicate that recommendation to government. I lost no time in it; I stated it in the very words of the jury, without adding a word of mine upon the evidence, being of opinion, that I should not serve the prisoner if I did. The consideration of mercy is where it ought to be untouched by me. It will be exercised or not, for any thing I know;—I form no conjecture upon it.

I now take leave of this man, and the general opinion circulated about him, that he is not to be believed upon his oath. If there be any man in court of a different opinion, he is of different materials in heart and understanding from any I know of.

Is it of consequence, or not, that these trials should go into the country, truly? I think it is. It was alleged, that the verdicts were founded upon the extravagant assertions

of a wretch who should not be believed. If there be any man who thinks that way, I desire no longer to discourse with him upon any subject.

Having made those impressions upon your minds, which I trust I have, with regard to the credibility of this witness, let me mention what is of more consequence to us all, and if you treat it with neglect, you do not deserve what the constitution and your oaths suppose you to possess, nay, the heads you wear. We have been labouring five years under the evils of sedition, coupled with privy conspiracy, and rebellion. One springs from the other, but fortunately as they grow up, they crumble by the weight of their own enormity, and could not exist but from one cause, and that is, the criminal torpor, which prevails among you. I have observed a criminal disregard, indolence and inattention of the most apparent duty of the subject, for some time past, to such a degree as has been productive of the most serious mischief.

Here I cannot avoid obtruding a word upon you with respect to myself. The history of my life has been a history of toleration. By education, by nature and the habits of my life, I have been led to indulge toleration. I never discouraged inquiry.—Bold, open debate, open argument, honest opinions only guarded by the principles of charity, morality, good order and decency—so guarded, let your argument be as free as wind, and your words as comprehensive as language can speak. If I have misrepresented myself, I call upon the community to be witness against me. Every man feeling any regard for the common welfare must acknowledge, that the present moment is sufficient to raise suspicion, which is ever considered as the best centinel of wisdom. I am now speaking before a number of people, who have made fortunes—who are remarkable for industry—who never forgot the common good, in pursuing their personal interest, I ask them, whether this be not a moment for alarm?—What! that you should have a club of traitors in the bowels of your country, and have found none of them but a few boys and a soldier?—Why do you not exert yourselves?—You acknowledge, that there is a set of people called Defenders, they come in the night—they take arms, and get money, but they mean no mischief!—They take arms:—Why do you suffer them?—“Why really,” answers one of these supine men, “I do not know: one would not wish, to be sure, to make enemies.” And what do you expect?—“Why, that I shall not be the first whose throat will be cut.” But if you should not be the first, you will be the second, and if not the second, you will be the third. See what has been the case in France: what a succession of persons has been mowed down by the populace! The duke of Orleans came to the block under the hands of the persons, whom he himself had raised into consequence. That may be the case here.

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Another excuse is urged. “If I inquire after those who take my arms, they will cut my throat.” I am not now talking lightly. What did Swift, who was a man of much political sagacity?—This country had been greatly infested by a nest of robbers; by one spirited paper, teaching, that each honest man had strength enough to root out the mischief, he obliged them, in a manner, to do that which as members of society, they ought. They were pursued, laid hold of, the arms were taken from them.—What is attributed to one of the Mount-morris family?—With one sword, he subdued seven, and brought them to the gallows. I saw the man’s picture, with blood upon his face:—glorious picture! and glorious story to be told! If you have minds and spirits entertaining any regard for your parents, your children, or the constitution which you hold dear, can it be doubted, that, with the assistance of government, the power and the sinews of government, if individuals exerted themselves for a month, these conspiracies must be suppressed?—Every sensible man of every denomination should step forward—I mention not names—I call upon all ranks, whether Protestants, or not;—I call upon all classes of religion to stand up and do their duty, and suppress a common evil. Who have been the instruments of it?—men who have fled from the law, or who have suffered under it. Can it be doubted then, when you have every man of property to watch and detect abuses of so mischievous a nature, that they could not be suppressed?—Take notice of every person within and without your houses—observe what their opinions and occupations are—where they spend their time, and how they are employed. I am not talking now to infants, or boys; if due vigilance be exerted for a month, a Defender could not exist for a month within 40 miles of Dublin. These are either servants, or apprentice-boys, or workmen. Look then into your houses, and see how your tenants, domestics and others are employed—examine public-houses; see what the general conduct is, that people do not lose their senses by excess. Want of morality becomes a necessary consequence of want of sense in such cases. We see in this great town, swarms at every lane, debauching the morals of its inhabitants. Men have been punished by the pillory, for what? For endeavouring to corrupt the minds of the youth by obscene pictures, and yet I have seen twenty men, with smiles and smirks, as if they were pleased and delighted with scandalous representations. What are magistrates for, if these abuses be tolerated?—Point your minds to Scotland:—she is a model of temperance, of understanding, of wisdom, of religion, of decency to all the world, and she has thriven accordingly. It is not, that the Scotch are a fortunate people. No, it does not depend upon fortune; it is good sense, and good conduct. There is not a drunken

creature to be met with there in a month. Whereas here, I am sorry to say, that I have more pain in keeping my horse from trampling upon drunken people of a Sunday than from any care of myself. In defiance of all decency, they seem to have come drunk into the world, and they determine to go drunk out of it.

But see the consequence of this : people are rendered ripe for any mischief. Exert yourselves then to stop this evil. Call for aid in this undertaking, and if you find the magistrate or the friend disregard you, mark that man, no matter what his religion or tenets may be, whether he carries the prayer-book or the breviary, the Koran or Confucius, if he do not assist you, when he can, he is a Defender, and treat him as such.

Make men give an account of their conduct. See what is done, and declare what ought to be done. Any act which makes a man accessory in felony, makes him a principal in treason. If he comforts and abets a traitor, knowing him to be such, he becomes a principal in treason ; therefore it behoves him to take care how he keeps in his mind the knowledge of a man being a Defender. Every man who protects, who assists or abets, upholds or harbours a traitor, knowing him to be such, is in the eye of the law and in common sense a traitor, and liable to the penalties of treason. The next offence is misprision of treason, and that is, where a man knows a person to be a Defender, and conceals it ; there he is guilty of a misprision of treason, which is punished with the forfeiture of goods and chattels and imprisonment for the life of the party.

I am stating this in the presence of many knowing the profession. If I misstate, let me be corrected. I am speaking before an auditory consisting of hundreds. Is it not probable, that many of those who hear me are trembling at the idea of having assisted Defenders, or having been guilty of misprision in not discovering them?—It is therefore time to watch their own conduct. I have given them fair warning. I have told them the law, as it was my duty to do, at an important and alarming period. I scorn the consequences so far as they may affect my own person. If this infamy is to disgrace your country (an infamy which it has escaped for 100 years, for Jackson was the first traitor tried here for a century, and you see they are thickening and increasing) so may God judge me as I had rather die to-morrow. I am not speaking for myself. I have means of protection, which many have not. But your spirit and integrity is your best protection—it is the protection of the humblest among you. Honest virtue and spirit triumph over all the vices of the earth.

Adopt as many of these sentiments as come home to your hearts, and the situation you are in ; I hope I have, in thus addressing you, done some good ; I certainly did not mean to do any harm.

Mr. Attorney General.—Is it your lordship's wish to mention any day for execution to be done upon these men ?

Earl of Clonmell.—Mention the day yourself ; we will adopt your sentiments.

Mr. Attorney General.—I had no particular day in contemplation. We wish nothing more, than that of making these prosecutions have the effect, which was intended, namely, the effect arising from example.

Earl of Clonmell.—You can have no other object. One of the prisoners mentioned with some sharpness, that a man not recommended had ten weeks. Do you think a month will do ?

Mr. Attorney General.—My lord, I have no other object than what I mentioned. But the compassionate course to be taken is to make examples as soon as may be consistent with humanity—to show the people they cannot escape punishment, and thereby prevent other fellow creatures from following the like crimes.

Earl of Clonmell.—Suppose we appoint this day fortnight ?

Mr. Attorney General.—My lord, that will give time enough for those who have power to extend mercy, if they choose to do so. But the prisoners should not entertain such an idea themselves. I wished the day not to be too distant, lest the prisoners might indulge expectations, which were not afterwards to be gratified, and at the same time not to encourage those who are taught by every possible means, that government is disinclined to execute the law. Every person in Court has discharged his duty, with coolness, deliberation, and impartiality, and my only desire is, that the prisoners may not be impressed with an idea that they are not to suffer, which might be fatal to them hereafter. And people should not go away with an idea, that there is a weakness in the government. If any man mistake me, I cannot speak plainer than I have done.

Mr. Justice Chamberlain.—From what has happened this day, I think my brother George and I should mention why we appointed a distant day for Weldon. I declare most solemnly, that it was not from any doubt of the propriety of the verdict. But the circumstances were very particular at the time of the sentence. One Jury upon Lawler's evidence convicted Weldon. Another jury upon the same evidence had acquitted Leary ; and it was clear, that the same Lawler would be again produced at this commission. We could not foresee what would happen ; and if it had happened, that Lawler was discredited by a jury, it would be our duty to recommend Weldon. Therefore a day was appointed for his execution, after this commission, for the purpose of ascertaining to the public satisfaction, whether Lawler was deserving of credit or not ; and that was the only motive. We should be deserving of public censure, indeed we should receive our own censure, if

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we sentenced Weldon, and allowed him to suffer, and afterwards Lawler should be discredited. I mention this, because in every case of this kind, it is highly essential, that the public should be satisfied.

Mr. Baron George.—As judge Chamberlain has mentioned, that there was no doubt in the minds of the judges who presided upon Weldon's trial, as to his guilt, I think it proper to declare, that I myself have no doubt of his guilt. But from the circumstance of Leary having been acquitted, we thought the ends of justice required, that the progress of justice should go forward in such a manner, that no event should arise to discredit that justice. It is not only necessary that judges should be satisfied; but we thought the ends of justice required, that occasion should be given to prove the guilt of those persons to demonstration. The infliction of such severe punishment, as is denounced upon crimes of this sort, ought to be done with the utmost deliberation, more especially where the crown, for the safety of the state, is the prosecutor. There should be nothing hasty, vindictive, or passionate, that people may see government intends nothing more than the distribution of justice in mercy. For these reasons, and as in cases of this sort nothing like mistake should intervene, we postponed the execution of Weldon, that every man in the kingdom might see the nature of the evidence. But it was not in consequence of any doubt whatsoever that rested in the minds of any of the judges. This was the opinion of Mr. Justice Finucane, who is now absent. If he were here, he would declare the same better than I can for him.

Mr. Attorney General.—I am apprehensive what I said was not perfectly understood. I

had no objection to a distant day; and so far from it, that if my humble opinion were necessary, I did approve of the delay; and if my opinion had been desired, I would have recommended a postponement.

Saturday the 12th of March was appointed for the execution.

Hugh Crothers, esq. foreman of the city grand jury, addressed the Court, and read a resolution passed by the grand jury, expressing their sincere thanks to lord chief justice Clonmell for his able and spirited address to them, and requesting his lordship's permission to have it printed.

The Earl of Clonmell said he acknowledged the favour, and was grateful for the compliment conveyed by the grand jury. He hoped what he said made a due impression upon their minds; but was sorry he could not comply with their request, as he had not prepared any notes for the occasion.

The following day the high sheriff of the county communicated to his lordship a similar resolution of the county grand jury, to which his lordship returned a similar answer.*

Kennedy and Hart were respited until the 19th of March, when Hart was executed. A farther respite has been granted to Kennedy.

* "I hope his lordship will excuse me for presuming to publish this address from my own notes. I feel that I have not been able to do it complete justice, but a wish to promote the same object, viz. the public good, has occasioned this publication." *Orig: Ed.*

617. Proceedings on the Trial of ANDREW GLENNAN, PHILIP KANE, OWEN REILY, CHARLES SORAGHAN, PATRICK KINSHELA, MICHAEL SLEAVEN, JOHN CONNOR, HUGH BYRNE, MICHAEL WALSH, JOHN RATICAN, JAMES CARMICHAEL, JAMES CONNOR, and JAMES DEMPSEY, for a Conspiracy, before the Court holden under a Commission of Oyer and Terminer at Dublin, on Monday February 22nd: 36 GEORGE III. A. D. 1796.*

COMMISSION.

Monday February 22d, 1796.

The Grand Jury having found the following indictment, the persons therein named were this day arraigned.

* Taken by William Ridgeway, Esq. Barrister at Law.

County of the City } "THE jurors of our
of Dublin to wit. } "lord the king upon
"their oath present that Andrew Glennan
"of the city of Dublin yeoman Philip Kane
"Owen Reily Charles Soraghan Patrick Kin-
"shela Michael Sleaven John Connor Hugh
"Byrne Michael Walsh John Ratican James
"Carmichael James Connor and James

"Dempsey of the said city yeomen being persons of evil name and dishonest conversation on the 31st of January in the 36th year of the reign &c. at Suffolk-street &c., contriving and intending one John Hanlon wrongfully to oppress and aggrieve and him to death and final destruction to bring and cause and procure to be brought on the same day year and place with force and arms &c. unlawfully wickedly and maliciously did conspire confederate and agree the said John Hanlon feloniously wilfully and of their malice afore-thought to kill and murder, to the evil and pernicious example of all others in the like case of sending and against the peace of our said lord the king his crown and dignity."

The prisoners severally pleaded Not Guilty.—And a Jury being sworn, the prisoners were given in charge.

Mr. Attorney General.—My Lord, and Gentlemen of the Jury. This is an indictment against the prisoners, for conspiring to put to death John Hanlon, a soldier in the artillery. Gentlemen, the mentioning of such a crime alone must impress every mind with horror; and I am sorry to be able to state, in the hearing of my fellow creatures, that it is a crime which is growing too familiar in the lower orders of the people. I do not say this with a desire to see conviction pass upon these people; but to show how necessary it is to examine into the matter with all possible attention; that if the prisoners be guilty, they may be found so, and examples made to deter others from offending in like cases.

Gentlemen, the circumstances of this case are very few. It is known very well, that seditious conspiracies have existed within this kingdom for a considerable time; they have been entered into by persons associated as Defenders. Several persons have been brought to trial, and some have been punished for their offences, amounting to high treason. Some who have been accused, and arrested, yet remain to be tried. In the town of Naas there at present remain several persons, some indicted at the last assizes, and some have been apprehended since—all charged with some species of crime or other, which fall under the general denomination of Defenderism.* Among these men, remaining in a gaol of Naas is a man of the name of Gavacén, who lived near Kilcock. He stands charged with several offences, and will be

brought to trial next week.* He is brother-in-law of Glennan, the prisoner. Gentlemen, the prisoner, Glennan, is a dairy-man, and lives in Bow-street, in the city of Dublin. It has been the diabolical policy, adopted by these people, to prevent their associates from being brought to justice, when apprehended, by assassinating the persons supposed to be witnesses against them. Glennan conceived the design of assassinating John Hanlon, who he supposed would be a witness against the prisoners in Naas and among the rest against his brother-in-law. A man of the name of Thomas Smith is a gunner in the artillery. He was known to Glennan for some time, and was high in his confidence. Smith had in a way that he will describe to you, associated himself at a distant period back with some persons, who had entered into these conspiracies. He had remained with them but a short while, when he became sensible of the situation in which he stood, and made known to government the conspiracy which existed against it. Glennan, being desirous to procure the acquittal of Gavacén, and the others in Naas, conceived, that through Smith, the soldier in the artillery, he might easily effect the assassination of Hanlon, who he supposed would be a witness against the prisoners in that town.

Gentlemen, in order to bring to effect this purpose, some time in the beginning of January, he sent for Smith to come to his house.—Smith obeyed the summons, and on Sunday, the 3rd of January, he came to the house of Glennan at Bow-bridge. Glennan there told Smith that there were several Defenders remaining for trial in the gaol of Naas, and asked him if he knew Hanlon, who had some time before enlisted. Smith said he did. Glennan then said, he was to be a witness against the Defenders in Naas, that he must be murdered, and he told him that he expected through the means of Smith to be able to effect his purpose. After some farther conversation, it was agreed, that a meeting should be had at the house of Carmichael, who keeps a public house in Thomas-street.—A meeting of the "boys," as they denominated it—upon Sunday the 24th of January, in order to confer upon the means of effecting their plan. Upon the 24th Smith came to the house of Carmichael and there he met Glennan and several of the persons now at the bar, and there they did confer together upon the means of assassinating Hanlon. They desired, that Smith should prevail with Hanlon to come to town upon the ensuing Sunday to Carmichael's, where they would meet Glennan, and the rest of the associates, that they would accompany Smith and Hanlon back again, and throw him into the Liffey, as they walked along the

* "At the Spring assizes for Kildare, 1796, three persons who had been indicted for high treason submitted, and three indicted for administering unlawful oaths were found guilty upon the testimony of Hanlon. Three men were found guilty for being concerned in shooting at Mr. Ryan, and two others, indicted for the same offence, submitted."—*Orig. Edit.*

"Gavacén was afterwards convicted of administering an unlawful oath, upon the testimony of one Kelly."—*Orig. Edit.*

path. Smith communicated this scheme to serjeant-major Lane of the artillery at Chapelizod, who directed Smith to go to town according to the appointment, and to bring Hanlon along with him. Accordingly on Sunday evening they went together, Hanlon accompanying Smith. In their way to town, Hanlon asked Smith, for what purpose they were sent to town at that hour in the evening; upon which, Smith disclosed to Hanlon the purpose for which they were sent. Hanlon then hesitated to go, but Smith told him he was safe, for that alderman Alexander and Alderman Tweedy were informed of the whole transaction—that a party of the peace officers were assembled at Watling-street, near the house of Carmichael, and it was agreed, that a person should be sent in to give a signal, when the party were assembled that they might be arrested.

Smith and Hanlon then proceeded to town, and in their way the former stepped into the house of Glennan, who expressed his happiness, said he was glad to see the lad, desired them to go to Carmichael's, and the "boys" would follow. Smith and Hanlon accordingly went to Carmichael's; there they found two or three, and presently they were joined by others, who addressed Smith as if they had not seen him before. They talked together for a while, and whispered somewhat about the design, but not in the hearing of Hanlon, though in his view, so that he could not go away without being perceived. The signal was then given—the party came in—the persons at the bar were all arrested, and instantly committed.

This, gentlemen, is a state of the facts which will be proved, and if you believe them, they necessarily draw the conclusion, that the prisoners are guilty of the offence charged against them. Some other incidental circumstances will come out, but they do not go directly to the facts charged, though they go to establish them;—they will be told by Smith, and they give credit to his evidence, if he required corroboration. Gentlemen, he is not an accomplice—he had no intention to commit the crime—his object was to prevent it, if he could. It will appear, when the magistrates came, these people pulled papers from their pockets, and threw them under the seat—papers directly evincing their intention of committing high treason. One of those papers was the Defender's catechism, in express words declaring their reliance upon the French Convention, and that their object was, to dethrone all kings. Upon some were found papers of a like tendency. This shows clearly their intention to commit the crime. Smith will be corroborated by the evidence of the magistrates and other persons. When the facts shall be proved, there can be no doubt of the prisoners' guilt: and if they be guilty, we can only lament, that crimes of the deepest dye can be punished but as a misdemeanor.

Thomas Smith sworn.—Examined by Mr. Solicitor General.

Do you recollect the 3rd of January last?—I do.

Do you remember to have called upon any body that day?—At the house of Andrew Glennan, No. 7, Bowbridge:—there he is [pointing at the prisoner in the dock.]

Had you any conversation with him?—Yes: he treated me to a beef-steak, and then took me out, and gave me two pots of porter.

What conversation had you with him?—The first person that broke the discourse was Glennan's wife. She asked me, if there was a recruit in the artillery of the name of Hanlon.

What answer did you make?—I told her, I did not know him, nor did I at the time;—I then recollected and said, I did know him, that he lived a few doors from me. Glennan said, you are the very man the business lies upon; he must be settled; I shall way lay him, and kill him.

Did he assign any other reason?—Glennan said, there was to the amount of eleven Defenders in Naas, one of whom was brother-in-law to him, (Glennan), and Hanlon was to prosecute them at the next assizes.

Court.—Did he say what they were in for?

Witness.—For Defenderism.

Mr. Solicitor General.—You said one of persons confined was Gavacen?—Yes: he was brother to Mrs. Glennan.

How came you to be in terms of intimacy with Glennan?—I was sworn in January 1795, as a Defender in James Doyle's house, George's-quay: and Glennan and Doyle stood by, as commanding officers of the regiment.

That connexion subsisted?—Yes it did.

After the conversation terminated, was any appointment made?—Yes: I was to come as conveniently as I could, and to make up an intimacy with Hanlon in the mean time, and bring him to Glennan's house.

You belong to the regiment of artillery?—I do.

You were then in that regiment?—I was.

Did you inform any person of this conversation?—When I came home, and found Hanlon was to be murdered, next morning upon parade I called serjeant-major Lane aside, and told him the whole. I told him I was to set Hanlon, and Glennan was to murder him. I met Glennan afterwards, when I went to George's quay, and William Keeling, and James Ward, Defenders. They go by so many names, it is hard to know them.

Did you go any where?—Yes, they brought me into a public-house.

Court.—They were Defenders?

Witness.—Yes.

Mr. Solicitor General.—What passed?—Glennan opened the discourse, and informed

the other two that I was the man who could set Hanlon, and bring him forward to be murdered.

You mean Glennan the prisoner?—The present man there.

What farther did he say?—I was to meet him as soon as possible again.

Was that part of the conversation?—On that day it was, and on or about the 24th of January.

For the same business?—Yes.

How soon after did you meet them?—On the 24th of January.

Did you see Hanlon between that day and the former day?—I saw him upon duty, but had no conversation with him.

Did you see him upon the 24th?—I do not know the exact day:—but I had no conversation with him. I had no conversation with him three times in my life, until I was sent to have him murdered.

What happened upon the 24th?—I went to Glennan's upon Bow-bridge. Word was left that he was gone to Carmichael's, 21 Thomas street.

Mention whether you met Glennan at Carmichael's?—I did.

Is Carmichael at the bar?—He is: there he is [pointing to him.]

Who else was there? Was there any other?—Yes, Patrik Kinshela, Michael Sleaven or Shanagan—to the best of my knowledge he was there.

Are you certain whether he was there or not?—I am positive.

Do you see any body else who was there?—Yes a good many;—no not that day.

What conversation happened in the presence of these you have mentioned upon the 24th?—The conversation that happened that day with Kinshela, Sleaven and Glennan was for me to bring in Hanlon.

Was Carmichael present?—No, he was attending his business in the house.

Was he present at any part of the conversation?—Not belonging to Hanlon.

Now mention the conversation between the other persons upon that day?—I was to bring in Hanlon and they were all to murder Hanlon upon the Long Meadows going from Bowbridge. I was asked, could I bring Hanlon next Sunday. I said, I did not know, the duty being severe, and perhaps I might be on duty myself, or he might. Sleaven said, "you must bring him in, I have been watching a week for him, and if I wait until Sunday it will be a fortnight; if another Sunday it will be three weeks." I said, I would call upon Glennan on Thursday, and let him know whether I could bring in Hanlon on Sunday, or not.

Did any conversation happen about what they were to do with Hanlon?—To murder him upon the Long Meadows, and throw his body into the river.

Court.—How many knew that purpose?—Glennan, Kinshela, and Sleaven.

Court.—Any body else at the bar?—No body else at the bar.

Mr. *Solicitor General*.—You undertook to come in on Thursday: did you come in?—I did.

Whom did you see?—Glennan at his house.

What happened?—He told me he saw Kinshela, and asked me if I could bring in Hanlon.—I told him I could—he told me, before he would eat his breakfast next morning he would be with Kinshela, and give him word, and they would be fully prepared for the murder of Hanlon.

Did you bring Hanlon the next Sunday?—I did, by order of serjeant major Lane from parade.

Then during this time you had frequent communications with serjeant major Lane?—I had every day: as any thing passed, when I came home, I let serjeant major Lane know it.

You came on the Sunday following?—I did.

Where?—To the house of Glennan.

Hanlon walked with you?—He did till we came half way through the fields when he stopped and said, "now Smith, where am I going."

Court.—Where was that?—About half-way between Island-bridge and Bowbridge.

Court.—In the Long Meadows?—Yes.

Court.—What hour of the day?—It was coming the dusk of the evening—we were at Glennan's at night fall, and at this time we were half a mile from his house.

Mr. *Solicitor General*.—What answer did you make to Hanlon?—I told him he was going to be murdered. He made a halt and said he would not come. I told him, he should come, and with the help of God I would bring him home safe.

Did he consent?—He came forward and said, "take care, perhaps they might poison me unknown to you."

Court.—Who did he mean by *they*?—I told him the secret—the whole business from beginning to end, as we were going through the fields.

Mr. *Solicitor General*.—You satisfied him?—I did.

You came to Glennan's?—Yes.

Was he at home?—He was, after dining; there was a man standing in the floor with him with the appearance of a gentleman with boots and good clothes; I do not know who he was.

Did the gentleman in the boots say any thing?—No.

Did Glennan say any thing?—He did:—he asked me "Had I Hanlon?"—I told him I had.

Did he ask it in the presence of the gentleman?—He did, out plump before him.

Court.—Where was Hanlon at that time?—He was outside of Glennan's house.

Mr. *Solicitor General*.—Did Glennan make any answer when you told him?—Glennan

said, "whoel him up to Carmichael's and all the boys will be up after you by-and-by."

Court.—Did you understand what the boys meant?—To be sure, the party that was to murder Hanlon that Glennan was to bring.

Court.—In the dusk of the evening?—Yes.

Mr. Solicitor General.—You went up to Carmichael's?—Yes.

What happened there?—We had two pots of threepenny.

Who?—Hanlon and I;—nobody else had come there; Glennan had ordered me to call for what I liked, and not to spare cost—when we called for the threepenny in walked Patrick Kinshela.

Who else came in?—There came about six in all.

Mention their names?—I cannot give their distinct names. But I can show them.

Show them?—Simon Walsh was there. There were ten in all, and one escaped.

Point them out?—I do not know their names—Philip Kane was the man who came forward to the counter, and said "he was the man, who would do for Hanlon!" Andrew Glennan was there—Owen Reily was there—I was often in his company as a defender

Byrne said he would convey Hanlon a piece of the way home.—The prisoners are all in different appearances from what they were in at the time. I have no call to say to Carmichael whatsoever, as to the murder of Hanlon.

Did they all come at once?—Kinshela came with the first party, and then the other party came in.

Did they converse together?—The word was this:—they were to ask, "who was with me."—I was to answer, "Hanlon a recruit, a friend of mine, who came in to take a drink."

Did they ask you?—They did, and I told them—-we were sitting in Carmichael's front tap-room, opposite the fire, as you go in, you turn to the right—-we were sitting there when they came in. Kinshela and the party moved to the center tap-room when they came in, and they called for two large jugs of punch, and some beef-steaks.—The jugs held two quarts, or three pints; we drank until such time as Glennan and his party came in.

When Glennan and his party came in, was there any farther conversation?—The same as before.

Did Glennan ask you, as the other had?—Surely: they all shook me by the hand, and I thought they would force my arms from my shoulders.—I wanted to be near, and got near the door; alderman Alexander's man was in the front tap-room drinking with another person.

He was there you say?—He had been with me there the night before, I showed him where to sit privately, and how to act for taking these people. I told him I would give him a signal, when to take the people.

Do you know his name?—No.

How long did you sit before the signal was given?—We were not sitting long—Some made me sit on their knees—Sleaven was running about like a distracted man, and he said "when this business is completed, I will bring 18,000 men to Dublin on the Friday following."

Did Glennan hear?—Certainly, and Kinshela too.

Did alderman Alexander's man hear?—No.

You talked about a sign, what sign? was it a Defender's sign?—No; I was to take off my hat, to scratch my head, and give a cough—I did so, and alderman Alexander's man went out for the party.

Was there any farther conversation between you relative to the party?—None. We sat down, and the second toast we drank was, "bad luck to all bad Defenders."

Was that so loud as that all the company could hear?—It was, the whole house could hear it:—it was not hid in a bushel.

After that did any thing remarkable happen?—I do not know what happened between Hanlon then, because I went to the door, near the front tap-room; but I had my eye upon Hanlon, for fear of any danger to him:—they were all so fond of me, some shaking me by the hand, and almost pulling my arms off.

How soon after did the guard come?—I had not time to take a glass of punch before they came.

What happened after?—Colonel Alexander came in, and that gentleman [alderman Tweedy].

What did they do?—They desired the constable to make me prisoner, and take me one side out of their company, for fear they should hurt me. The alderman then took the prisoners one after another, and desired me pinch his arm as any of the party passed; a man was then put upon each side of the prisoners, until they were brought to the office.

Were they searched?—They were.

Did you see any paper?—No.

Hanlon was there that time?—He was all the time, and can tell what passed. There was a paper taken out at alderman Alexander's office, and read.

Out of whose pocket?—I do not know.

Thomas Smith cross examined by Mr.

Mr. Nally.

How long have you been in the Artillery?—Since the 15th of April, 1795.

Was it before or after you enlisted, you were sworn a Defender?—Before.

Were you intimately acquainted with Glennan before you went into the Artillery?—I was.

Did Glennan hold any conversation with you about going into the Artillery?—I'll tell you the reason I went in. I was a Protestant all my life, and so was my father and grandfather since king William's time. I was

obliged to hide my bible and prayer-book, and I consulted with my wife, and determined to go into the army, to practise my profession as usual. I was obliged to make my daughter deny that she was a Protestant born, and make her say, she went to mass.

[Here the witness was examined by the Court.]

When did you hear of their intentions?—In February, 1795.

What did you hear?—They were talking in Connor's house—we expected every day a massacre and rebellion was to break out—no Protestant was to be left alive. We were to serve under sir Edward Bellew, and were sworn to that. The oath was, to serve under James Cole, sir Edward Bellew, Napper Tandy, and Hamilton Rowan. There were sheets of paper, and they swore to it, as they said. I gave information. They were to have no king—they said “we will recover our estates, sweep clean the Protestants, kill the lord lieutenant, and leave none alive.”—there were a good many more by.

What do you say were their determinations, as you can recollect them?—The oath was, to serve sir Edward Bellew, James Cole, Napper Tandy, and Hamilton Rowan—to serve France and Ireland.

What did you say about the lord lieutenant?—We were one morning at Connor's, Glenan, Dempsy, and others—we came to a resolution of shooting the lord lieutenant.

Upon what day was that?—I do not know; it was upon a Sunday, as he passed through the Park. We were to take the magazine in the Park, the Castle of Dublin, and put all the nobility therein to death.

You said you were in constant expectation of something?—Of the rebellion breaking out.

Where?—In Dublin.

When did that commence?—Last April, 1795.

How do you know it was in April last?—It was sometime about April, or March; it was about that time I listed—I gave information so often to captain Burgh and to the noblemen in Dublin and Ireland, and seeing no notice taken of it, I was sure I would come to a bad end.

To whom did you give information beside captain Burgh?—I was brought to the Castle, and saw three or four lords with stars. I do not know who they were; captain Burgh knew who they were.

You gave information you say early in 1795?—I did in January, 1795.

To whom?—To captain Legge and captain Burgh and other gentlemen, I do not know them.

You said you saw persons with stars?—I did.

Do you remember how many?—To the best of my knowledge three or four.

What part of the Castle?—As you go into the upper Castle-gate, from the tower, on the

left there is a door in the corner, I went in there.

Were you examined?—I was.

Who examined you?—The gentlemen there.

Were there any gentlemen of the bar there?

—I do not know.

What hour of the day or night was it?—It was early;—in the month of April. When I spoke of January, it was in the evening.

Were you examined another time?—Yes, I saw captain Burgh there.

Who do you mean by noblemen?—The noblemen I saw there. There was another gentleman with captain Burgh there. I did all I could to get forward, but could get nothing done.

In what situation were you?—I kept a porter-house in Garden-lane.

You were twice examined at the Castle?—I was.

Consider before you answer: by virtue of your oath, was there any person there dressed like a lawyer, at any time you were examined?—There was a person dressed in black, but I did not know whether he was a lawyer.

Do you know him?—No.

How many were there?—Three or four.

Where did you see the people with stars?—In that room.

Did you know any of them?—There was a gentleman with a small black patch upon his face, I did not know him.

What was the last time you were examined in the Castle?—In the month of April.

First in January?—Yes.

Were the same persons present the last time as at first?—No: first there was captains Burgh and Legge and a gentleman, I believe the secretary of the Board of Ordnance.

Who the second time?—The gentlemen with stars, and captain Burgh was called upon to see whether I had told him before.

He is alive?—Yes.

Was he present at the examination?—No, but he came forward, being sent for, and specified that I told him before.

Cross-examination resumed:

You in order to preserve to yourself the free exercise of your religion, went into the artillery?—In order to preserve a free life, and the exercise of my religion, and to save a number of innocent persons in the kingdom.

Before you went into the Artillery, you had been an old Defender?—I had.

But you became so frightened at the wickedness of that society, that you went into the Artillery?—I did.

How soon after you were sworn did you come to the resolution of shooting the lord lieutenant? Did you give information?—That was before I went into the Artillery.

Did you give any information of the intention to shoot the lord lieutenant until you went into the Artillery?—I did. I hired a chair, and paid eighteen pence for it to go to Burgh.

How long after the resolution was taken?
—At that time, but a day or two after. I lost no time, but went immediately after.

Did you immediately on its occurring to your mind that your religion and life were in danger, give up your connexion with Defenders?—I did till they followed me to Chapelizod.

Did you not go to the house of Glennan?—But it was a long time before that, they followed me to Chapelizod.

You followed him to Bow-bridge?—Yes, but he and many others followed me first.

Did you assign any reason for going into the Artillery?—I did: I went for poverty. They asked me why I did not apply? I said, I would not ask any friend.

Is not the Artillery known to be a protestant corps?—It is a free corps for any man who conducts himself well, and promotion is free for any man.

Did you ever see an advertisement for recruiting in the Artillery?—I did.

Do they not state that the men must be protestants, and of good character?—That time was, but now they take any men in the way, and if they conduct themselves well may be promoted.

Was not the qualification inserted in the last advertisement?—I did not see one these five years.

Is it not the custom to insert it down to this day?—I do not believe it; of a Sunday, when we parade at Chapelizod every man is dressed and when church bell rings, the drum beats, and those who go to mass, turn to the left, and it is free for the exercise of religion, every man does as he pleases.

You and Glennan have been acquainted for a considerable time?—From the 1st of January 1795.

You kept a porter-house in Garden-lane?—I did.

Did Glennan resort your house there?—He did.

Did you at that time go to any place of worship?—No. I went two or three times with them to mass, but never went within side a church door.

You became a Defender in 1795?—I did. And you continued down to April—the time you enlisted?—I did.

Do you not believe that your entering into the Artillery intimated to these people that you were a protestant?—No, I am positive it did not.

Did you continue to deny your religion after?—No, I went to church freely as any other man.

After that did you visit Glennan and the others as a Defender?—I did.

When they followed you, as you say, to Chapelizod, had you no apprehension, that these men, who used to sweep the protestants would sweep you?—I had apprehensions of it and seldom expected any thing else.

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And did you not go alone to the house of Glennan?—I did with Hanlon.

Did you not go without him?—I did, often alone.

Did you not conceive from the description you have given of Glennan, that he was one who would sweep off the protestants?—I was.

And yet you went to him?—I went there through fear of my life.

From that fear you went into the Artillery?—I did. I went to Glennan's by order of sergeant Lane.

Hanlon and you were not intimate?—No.

The first intimation he had, that he was to be murdered, was upon the bank of the river?—It was.

Between Island-bridge and Chapelizod?—It was.

You were afraid of being cut off by these people, and cautioned Hanlon to defend himself?—No, I told him nothing till we left Chapelizod.

He was unarmed?—No, he had his sidearms.

Had you been on terms of intimacy with all the prisoners?—I was often in their company but did not know their names; these Defenders give themselves extraordinary names.

Are you so well acquainted, as to swear to their faces?—Did I not do so already?—I swear they are the men who were by to murder Hanlon and none other.

Do you take upon you to swear, that all the ten men in the dock were present, and overheard the conversation respecting the murder?—I am positive they were all consenting, and were to assist in it.

Was the proposal to murder Hanlon so loud that every man could hear it?—Certainly.

How large was the room?—It was a large room.

I am speaking of the last night—Sure they did not talk of the murder of Hanlon before his face.

Did any person come in?—It was a free house.

Did any person come in, and who were at the fire side?—I am not positive.

Are you positive they were all present at the consultation to murder Hanlon?—No, there were twenty there.

Now, I ask you, were all the men at the bar in the room that night?—I am not positive.

Who were there the first night?—There were a great many—but all who were taken on the last night by my directions knew the plot.

John Hanlon sworn.—Examined by Mr. Prime Sergeant.

Do you remember the 31st of January last?—I do.

Did you receive any order from sergeant major Lane that day?—I did.

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What was it?—To come into town along with Smith, I did not know for what, till I came half way—Smith stopped to draw water—Smith said, you are going to be murdered.”—I said, I would not go—he said not to fear and told me the way. I then said, I would go, if it was to the mouth of a six pounder. We came to Glennan’s, I leaned my shoulder to the door, Smith went in, and Glennan said “wheel up the lad to Carmichael’s, and drink the best.”—We did so.—They came in two parties, five, or six each. They removed us from the place, being a small room, they took Smith upon their knees, they were so glad to see him. I drank heartily sure enough, and after some time, I said it was growing late, for I should be put into the guard house. He went to the door, and a croud came in. I was pleased to see them, and took courage and drank hearty. Smith was taken and the rest brought together. They drank, “present death and confusion to all bad Defenders.”—that was against me for betraying them.

You were to give information against Defenders?—I gave information against a party for a design to kill the rev. Mr. Walsh at Kilcock.

Point out the men?—I think they were all there (here he pointed to several of the prisoners)—it was candle light, and I was in much confusion—But I give my affidavit this man was there (pointing to Owen Reily) and this man (Peter Kinsheja) and this man (Simon Walsh) and this man (Andrew Glennan) and this man (Hugh Byrne.)

Were all the persons there that night taken into custody?—They were, ten I think and the landlord.

Cross-examined by Mr. Greene.

How long were you acquainted with these men before?—Never, not one man.

How long were you in their company that night?—Perhaps three quarters of an hour.

Were they not divided by separate benches?—No, because the first party that came in took us out of a small bench, and brought us into a spacious place.

You were a good deal terrified?—I was certainly.

You had not seen them before?—No, not one.

How then are you so certain as to their being in the same place?—By their expressions.

You cannot say what dress they were in?—I did not examine their dress.

Have they the same now which they had that night?—I am sure they have part of it, I swear to the five men—the very identical men.

They suspected you to be a Defender?—I was taken to be a Defender by a North-countryman at Kilcock, a stone cutter, and I was obliged to swear, or I would not come out alive.

You drank very heartily?—Three pints and a half of punch.

How much had you taken before the croud appeared?—Two pots of beer and two jugs of punch.

You mentioned to Smith that you were afraid of staying?—I did, seeing them going about.

You knew the officer had given you leave to go?—He did. But I did not know, not seeing the constables coming, how much danger there might be.

Mr. Greene.—Did you declare the night the persons were taken, that you had no charge against Reily.

Witness.—What charge could I have against any of them, but for their oaths and declarations.

Mr. Alderman Alexander sworn.—Examined by Mr. Saurin.

Do you recollect getting information from Smith?—I do.

What was the time and what the nature of the information?—A person called upon me at William-street, and said, that a person of the name of Smith would give information against sworn Defenders, and who were swearing Defenders, and that if I would meet him at any time, where he would not be suspected, he would meet me. I appointed the next morning at ten o’clock, he came and he told the story exactly as he related it here.

You heard him give his testimony here?—I did.

And the information he gave you was exactly the same as the account he gave here?—Exactly.

Did you mention the time this happened?—It was the Thursday before these people were taken up—the 28th I believe. I fired with Smith at the office to call at my own house at four o’clock, and I sent for alderman Tweedy. Smith came and gave examinations against these people. I agreed that he should go to the house with my men, in order to take them when they were assembled by giving a signal. At the time appointed two men were stationed at the house—I was told the sign was made—I came down with a party to Carmichael’s house and took them. I spoke to Smith, and desired him to identify them. He asked me, how? I told him, when I asked any of them what his name was, if he was of the party, to give my arm a pinch. I asked each man his name, and Smith gave me a pinch.

How many?—Ten, and the landlord—he was not sitting at the table.

Can you identify them?—Six of them I can—their dresses are all altered. That man, Sleaven or Shamrogue I know very well. Glennan I recollect perfectly well. I remember Reily too—we brought them all up to alderman Tweedy’s office, and he committed them.

Was the alderman there at the time the prisoners were brought?—He was at the office.

Did you see any thing more?—There was a paper under the table, a sort of Catechism. He pulled another paper out of the pockets of one of the party. Here are the papers.

Mr. Alderman Tweedy sworn.—Examined by Mr. Worthington.

Did alderman Alexander give into your care any persons on the 31st of January last?—He did.

Look round, and try if you see them?—I do; to the best of my belief they are the persons. I put them into a dock, and took them out one by one, and Smith identified them all. I gave them to the constable.

Who brought them to Newgate from your office?—My constables.

Have you any of those constables here?—No.

Did you find any thing upon any of the prisoners?—I found a Bible, and a manual, and this pocket-book, in which there was a paper with some powder in it. Under the table where they were sitting I found a number of bits of paper, which I endeavoured to put together, but I could not. Under the seat I found this kind of catechism.

You sent the men to Newgate who were given to you?—I did.

Tresham Gregg sworn.—Examined by Mr. Solicitor General.

You received all these men at the bar from alderman Tweedy on the 1st of February last?—I did [Here he mentioned all their names].

Under a warrant from the alderman?—Yes.

Cross-examined by Mr. Ridgeway.

Neither Connor nor Dempsey were delivered to you at the same time with the others?—They were not.

[Here the papers were offered to be read, but the counsel for the prisoners objecting, that no paper could be read, except such as was actually found upon the possession of one of the prisoners, or satisfactorily connected with one of them, the paper found under the seat was not read.]

[The following paper, found by alderman Tweedy upon one of the prisoners was read.]

"Are you a Christian?—I am. By what?

"—By baptism. Who baptised you?—

"St. John. Where?—In the river Jordan.

"What did he call you?—To be loyal. To

"who?—To God and my brothers. Are you

"consecrated?—I am. To what?—To the

"National Convention—to quell all Nations

"—to dethrone all kings, and plant the Tree

"of Liberty on our Irish land—whilst the

"French Defenders will protect our cause,

"and the Irish Defenders pull down the British

"laws. Which is the first T?—The Tree

"of Liberty. Who planted it?—The duke of

"Orleans. Where?—In his own Lawn.

"How high are you?—Three steps to Para-

"dise. How broad are you?—From E. to

"W. How long are you?—From N. to S.

"Are you astray?—No, I am not astray.

"Where are you going?—To the North.

"What to do?—To look for my Brother.

"What is his name?—Sarsfield. What is

"your number?—It is 5. What is your pass

"word?—Eliphismatis. How do you stand

"those times?—Upright as well as I can; I

"am afraid. Don't be afraid; the duke of

"York will save you: What do you carry?—

"The Rod of Aron at command. Who sent

"you here?—Simon Peter. Your coat is

"dirty?—Is it high up? Pretty high up.—If

"you be a friend you will come and clean it.

"Where did the Cock crow when the world

"heard him?—In France. What is your

"opinion of the weather?—It is quite clear.

"I think the faded flower will blow again."

Mr. M^r Nally.—My Lord, and Gentlemen of the Jury. In times like these, after what you have heard, considering myself, what I am in heart and soul, loving and revering the constitution under which I live, I shall not address you without expressing the abhorrence which I feel in my mind from the charge against the prisoners; and I cannot have a doubt, that every man upon the jury, equally abhors a crime, marked by the most infamous cruelty that can degrade the human heart. A conspiracy to commit a crime can have no palliation from the crime not having been perpetrated, and therefore the impression upon your mind must be the same, as if the murder were actually committed. But, gentlemen, let me warn you against retaining that impression in your mind, when you deliberate upon the case of the prisoners, because it is your duty to wipe away the heinousness of the offence so as not to suffer it to influence your minds beyond the investigation of the evidence which has been adduced. You are not to form a sudden conclusion, because the charge is atrocious. You are to consider this, that if such an offence could have been taken into consideration by *ten* men, it is equally possible, that *two* men, such as the witnesses, could form a conspiracy to fabricate the charge. They stand in equal situation as to past conduct. A paper is read—to prove what? That the prisoners are Defenders—the witnesses acknowledge *they* are Defenders. It appears, that they were considered to be perpetrators in all the enormities, until, as they allege, they took an asylum in the regiment of Artillery.

Gentlemen, I certainly cannot but acknowledge, that one fact sworn to by these men is corroborated—but what is that?—that they were taken in the house of Carmichael. But it does not follow, that they were all acting together as conspirators, and only four or five of the prisoners have been identified by either of the witnesses.

Gentlemen, the credit of the witnesses is with you, for this case depends entirely upon the credit, which you may give them; and

when you come to consider upon their credit, though it does not appear that they came as approvers,—that they were apprehended first, and came to save themselves from prosecution, yet it appears, that there was a time, when they themselves would have been guilty and were guilty of the very offences, which they impute to others. Gentlemen, witnesses will be produced on the part of some of the prisoners, to show that though they were in the house, yet that they are innocent persons.

James White sworn.—Examined by *Mr. Greene*.

Do you recollect the 31st of January last?—I do.

Were you in the house of Carmichael in the evening of that day?—Soraghan and Reily were in my company in a part of the room at a distance from the others. Soraghan lodged in the house. He was going home, having disagreed with his master, and wrote a letter to his mother to that effect. We went to look for a vacant seat in the front room, then went into the back room; there were nine or ten men there, and two artillery men. We went to the first vacancy opposite to them; we had two glasses—Reily then came in, and sat down and took two glasses of punch. A gentleman came in, and gave the first company in charge, and no person was let out. We sat contented there, and who the other persons were, I knew not.—But on the coming of the alderman he enquired our names, and he apprehended them as he got their names, and when he had the large company apprehended, and Carmichael, the man of the house, he then turned to Reily, and said, “you will come too, a very good name.” The only thing Reily had about him was a crane-note. He then asked Soraghan his name, “you will come too,” said he.—With that they marched out of the house, and no more was said that I heard.

Did either of the Artillery-men make any declaration with regard to Reily or Soraghan?—I spoke to the gentleman apprehending them, and said, “I hoped there was nothing as to them or their company.” The Artilleryman rose up and said, “no person was concerned, but those who sat with him in the large company.”

Cross-examined by the *Prime Sergeant*.

Soraghan and Reily lodged at Carmichael's?—Yes.

What brought you to Carmichael's?—I was upon my travels home, and met the two—Soraghan was at the door.

You met them accidentally?—I found them there.

Francis Russel sworn.—Examined by *Mr. Greene*.

Do you recollect the 31st of January?—I do, very well.

You were at the house of Carmichael?—I was.

Do you know Reily and Soraghan?—I never saw them before that night—they handed me a glass of punch—they were not of the company who were detected, but when the alderman came in, he desired all to be stopped.

Did you hear either of the Artillery-men make any declaration as to Reily or Soraghan?—No, I did not hear.

A Juror.—What are you?—I am a constable, and went there that night.

Mr. Alderman Alexander called again.

Was there any reason, why Reily and Soraghan were separated?—They were in a separate box with a woman.

Earl of Clonmell.—There is evidence for the jury as to ten,

Gentlemen of the Jury. The prisoners stand indicted for that they on the 31st of January last did conspire to kill and murder a person of the name of Hanlon. To support this prosecution Thomas Smith was produced; I shall read over his evidence without any observation, because I shall leave it totally to you. The case turns entirely upon the credit you give the witnesses.—(Here his lordship stated all the evidence). A paper was produced, manifestly treasonable, every word of it, and it goes to show you, that they were likely to assemble for the purpose of murdering a person, who was to prosecute other Defenders, being Defenders themselves.

Gentlemen, here the prosecution was rested, and *Mr. McNally* put the case upon fair ground, whether the prisoners, or the witnesses were the conspirators? It is a main question for your consideration. If you believe they have sworn falsely, and that this was a plan of theirs—a scheme to bring innocent persons into crimination, you must acquit them all. But if you believe the testimony of these witnesses, with the evidence of the aldermen, and Gregg as to their identity, you will find them guilty. This is a misdemeanor; I am glad it is, because if the crime had been committed, they must have been tried for murder. They then produced *James White*; all that he swore was, that he was present at Carmichael's house. He endeavoured to distinguish, so as to get out Reily and Soraghan, but the first witness said they had all decided to kill Hanlon—all participated in the intention.—This witness said these two were in a seat with him, distant from the other company—the Artillery-men said they were not of the company at first, but afterwards they included them.—Very little occurs to me, upon this occasion, to say to you. It is for your consideration. If you believe, that these people assembled with the criminal intent charged upon them—that they were brought together for the purpose of forming a scheme to destroy Hanlon, you ought to find them all guilty. If any line of distinction occurs to you, with regard to Reily and Soraghan, you will find accordingly: it does not occur to me. I will leave the case

to you; and if you have a reasonable doubt, not such as idle or fanciful men may take up on remote probabilities, but such as cannot satisfy your judgments upon your oaths, then you will acquit. If you have no such doubt, you will find them guilty. I have not dilated upon this case: perhaps the horror of the offence might lead me farther than I ought to go. You are rational men, and you will determine according to your consciences, whether you believe these men guilty, or not.

The Jury retired for about ten minutes and returned with a verdict finding James Connor and James Dempsey, Not Guilty—but all the other persons named in the indictment—Guilty.

Thursday, March 3rd, 1796.

Both the Grand Juries were called over.

The prisoners found guilty upon the indictment for the conspiracy were brought up to receive judgment.

The Earl of Clonmell, addressed the prisoners and said; I trust you will believe me, when I tell you, that I never left this Court with more real concern, than I did the first day you were called up here. I saw, as indeed at present, with sorrow and pain, ten decent looking men, above want, with no appearance of distress, with nothing to provoke them—with every reason to hope that they were and would be, and had been as useful members of society, as any other ten men in the community. Look at them (said his lordship, turning to the grand juries), and see whether you do not participate with me—they have the appearance either of tradesmen, or farmers, or of that class of citizens that might well have supported themselves by honest means, carrying on an honest livelihood and making themselves as respectable as any men, or set of men in the state (turning to the prisoners).—You may think then, with what painful distress I heard the offence against you, which the jury believed, notwithstanding every circumstance that might be urged in your favour; because ten of you were tried together, your number would be a circumstance to induce a jury to lean in your favour, if they had not been clear in the evidence against you. You have just heard sentence of death pronounced against a wretched soldier in your presence.* You, every one of you, owe to your prosecutor, Smith, whom you conceive to be a subject of great detestation—You owe to him, that the same sentence which you have heard pronounced upon the soldier, has not been repeated against every one of you, and that you are not the subject of that infa-

mous punishment which I have been obliged to pass upon that man. You have been charged upon the clearest evidence with conspiring to murder a fellow creature, who never gave personal offence to any of you. And see under what circumstances you appear—and it is necessary you should know the horror of the offence. This act from its commencement to the perpetration of it contained no small space of time. I know not what communion you are of—four Sundays intervened upon which you went to religious worship, with this horror upon your minds, and the very day you fixed upon to perpetrate the offence was Sunday, as if you were outraging against God Almighty.

You have had time to make your defence. I will state a few of the leading circumstances of the evidence and with the sanction that the jury have given it by their verdict upon their oaths, who were all respectable citizens. The case against you was this:—Glennan had a brother-in-law in the gaol of Naas, and he was informed against with ten or eleven other Defenders by the person you had conspired to murder—his name was John Hanlon. While those people were in gaol, Glennan and his wife got hold of Smith, who had been a Defender himself from 1795. That appeared from these circumstances. He swore, that in the presence of several he tendered his information three times at the Castle of Dublin, the first time so early as January 1795, one whole year before this transaction. He was there examined, and gave information against several Defenders, who had sworn to be true to the National Convention—to follow that fugitive traitor Hamilton Rowan, and also to follow Napper Tandy and two other persons—the sound of the name of one is respectable to my ear, sir Edward Bellew—the other, Cole, I know nothing of. Smith with others was sworn to support Defenders. He was examined two or three times by the confidential servants of government from January 1795 to April 1795. Now you all heard and saw what passed in the Autumn of 1795. It has been conveyed to the public through other lips, that is the evidence of Lawler,* between whom and Smith it never was pretended there was any knowledge. Hanlon gave information against a set of people who had vowed vengeance against a respectable clergyman, Mr. Walsh, and in order to take away the testimony of Hanlon, one scheme of murder was to follow the other, Glennan had undertaken to lay hold of Smith, who at this time was in the artillery, to which he had fled, not thinking there was assistance to be had at the Castle at that time. Glennan formed the plan so early as January 1796, and considered Smith as a proper person to seduce the unhappy man into their power—for that is one part of their execrable system, treason to be executed by murder. The mode was this: Smith was

* "His lordship had a few minutes before passed sentence upon Mulhern, a private in the Donegal militia, for murder." *Orig. Edit.*

* See the preceding cases.

to deliver Hanlon into their hands, they were to take him along the meadows, and put him to death and throw his body into the river, and Kane said, "as soon as it is fixed, I will, on the Friday after be able to march 18,000, men into Dublin." Whether he lied or not, or could do so or not, it is sworn he made the declaration. The import of the oath taken was to serve certain persons, who were named, to recover their estates, sweep clean the Protestants and leave none alive. Which of you made use of this expression constitutes no variation as to the argument—that was the general purport of Defenders—it has been sworn to by great numbers of people. The impression I wish to make is, that this is not an idle tale, but that there is existing, and has been for some time, a horrid system of murder and treason, the seeds of which were sown by such men as Rowan and Tandy, who have fled from their country. I wish that masters of families were more attentive to their children and their families in the early part of their lives. I have endeavoured to save the youth of this town. By two examples I have endeavoured to save the rest.

Masters should have some care that children and apprentices be not brought to the gallows in a hurry. Every master of a family should be accountable for his family, and not suffer them to resort to punch-houses—first letting them get together, then they are infected and made authors of the worst offences. From the 3rd of January down to the last day of the month, when this horrid plot was preparing against Hanlon, it appears that Glennan was the person to bring the boys about him. Smith informed Lane, and by well concerted conduct, and the spirit and vigilance of alderman Alexander, this horrid and infamous scheme was prevented from execution, which might have been perpetrated in half an hour after.

One of the Prisoners.—My lord, there were five of us chandlers had nothing to do with the business—we had come from Chapel.

Earl of Clonmell.—Five chandlers together on a Sunday evening in a punch-house?—You should have been in your own places. You talk of a chapel; that brings another part of the case into my mind. Let it be recollected, that Hamilton Rowan was or professed to be a Protestant—that Jackson was a Protestant clergyman, and therefore let not an expression of mine be supposed to apply to those of any persuasion. I am in too high a situation to fear any man, or class of men. I thank God, I am in a situation which puts me above politics. I have but one view—to exterminate this evil from the country, if I can.

What you have said, has not suggested any circumstance in your favour. But take it in another point of view. I will suppose the persons I have named were professedly of the Protestant religion.—What is doing in France?—There Roman Catholics are drown-

ing in hundreds.—Even their own clergymen are packed together and exterminated. So that religion is made a pretence. "We may begin with Protestants, but the next day we begin upon another class," and so they will proceed to a third, until they destroy each other. Let me go farther and suppose they succeed. If the streets of the city flowed with the blood of Protestants, that would answer no purpose. When the Protestants of this country were fewer and weaker by thousands than they are now, they were able to establish themselves, and they never can be borne down but by their own timidity, and want of spirit. Would it benefit the Roman Catholics?—Certainly not. They have been told so, and the oath is the ceremony which binds wicked hearts together, and if one class of men were destroyed, another would succeed, and every man having any thing to lose would fall under the knife. Suppose them to succeed in this, and that these associated people were wicked to damnation, if they have any sense of it, would it answer them, if they had destroyed every Roman Catholic of property in the country?—No. The country is a great one, and worth fighting for, and if they destroyed every man of property, the country would be conquered again. Therefore it is a fallacious system.

God and nature have joined England and Ireland together. It is impossible to separate them, and if bands of ruffians started up in every part, they could not hold the dominion of murder for a month. I have seen with pain, that this phrenzy has got among the people of Ireland, and if it be a phrenzy, prisons are their safest mad-houses. What was the situation of Meath?—Rich almost beyond any neighbouring county—the farmer happy—the peasantry, yeomen, and gentry all delighted with their situation, because all were independent. How is it altered?—Whence is it that that unhappy county has become a sort of slaughter-house?—From the practices of some wicked minded people; who they are I know not;—God forgive them. They will fall victims of the law, against which they are struggling. While the countries round are perishing through the horrors of war and famine, Ireland could not say, there was a creature unfed or unprovided for—Why?—Because the bad are fed by the good, and the South feeds the disturbers of the North; and if the country had been left to the Defenders, and if it had not been for the industry of the South there might have been one universal famine.—What then are these distracted and unhappy people told?—But in truth I early saw and spoke of it in acts of my duty here and elsewhere, that the mischief originated in nests of clubs in the city of Dublin,—Dublin is the mint for coining treason and circulating it in small parts, and making it current. A number of young persons with trades which might

make them respectable, not in want, no appearance of it, are become the most active agents. And here I must mention a circumstance—you must feel the weight of it. There never was a time, when persons of your description had less reason to complain. Look at the canals and various public works. Thousands of the poor are employed, and supplied with work even in the time of war. Within these five or six years past, many persons have looked to the state of the poor, and endeavoured to make them all comfortable and easy, and yet this is the time in which this phrenzy has seized such numbers. Is this an idle tale?—Is it not notorious, that cruel and horrid murders have been committed upon witnesses, just at the eve of the commission?—Is it not part of the system spread through the country to destroy witnesses?—Two creatures, because they were witnesses or supposed to be witnesses, have been brutally murdered in the dead of the night at the gate of a man who deserves as well from this country, as any other man in it. He who has employed so many of the poor to improve and embellish the most improved place in that part of the country where he resides. Few people are willing to do as much as he did. I have known him to have two military commissions. He quieted the South without a single person falling a sacrifice, and he quieted the West, with the thanks of that country. Yet two persons were murdered at his gate, because they were witnesses.

What must be the situation of persons of his description, if the country be made disagreeable to them?—The land will be abandoned by all the proprietors, and the tenantry will be left to be worried by tribes of agents and managers:—Their landlords will never see them.

So that taking this subject in every point of

view, it is the most wicked system of murder and treason that ever was heard of in any country, that for some years past has disgraced mine own.

A very old author discoursing upon Irishmen, says, “where Irishmen are good, it is impossible to find better, where they are bad, it is impossible to find worse” I am afraid, we have got to this alternative. Treachery was never the character of Irishmen. Courage and intrepidity were their characteristics. Every creature is taught to fight but boldly and fairly. But it was not until this system, founded upon the French mode, the total want of all principle, that we began to be disgraced.

I have gone thus far to show the consequences of this wicked and black system by which you have been seduced, bringing destruction upon yourselves, and every thing dear to you. I now come to the sentence which I am obliged to pronounce upon you.

I have received two or three petitions this morning upon this subject. I am bound by the verdict of the jury. It is a calamitous thing to think, that decent persons like you can be seduced. The witness swore that ten were equally acquainted with the intended murder. He acquitted three. But all the rest, he said, were acquainted with the design. I hope the example of this day will operate through the city, and all parts of the kingdom. You must have many relations. I will not wound them by exposing you in the streets—to send them home with sorrow and shame. For their sakes as well as your own I will not do it.

But you must be punished: and therefore each of you is to be imprisoned three years, pay a fine of 50*l.*, and give security for your good behaviour for seven years, commencing from the expiration of your imprisonment.

618. Proceedings on the Trial of the Right Reverend Father in God, JOHN [Warren] LORD BISHOP OF BANGOR; HUGH OWEN, D. D. JOHN ROBERTS, and JOHN WILLIAMS, Clerks; and THOMAS JONES, Gentleman, for a Riot: tried by a Special Jury, before the Honourable John Heath, Esq. one of the Justices of the Court of Common Pleas, at the Assizes holden at Shrewsbury on the 26th day of July: 36 GEORGE III. A. D. 1796.*

[The King on the prosecution of Samuel Grindley, against
The right reverend John Lord bishop of Bangor, Hugh Owen, clerk, D. D. John Roberts, clerk, John Williams, clerk, and Thomas Jones gentleman.]

JURY.

Thomas Kimmerley, of Leighton.
Thomas Jelfe Powys, of Smethcott,
John Moutrie, of Ashton-hall.
George Appleby, of Shiffnall.
John Bishton, of Kilsall.
Edward Gatacre, of Gatacre.
William Cludde, of Orkton.
Edward Pemberton, of Wrockwardine.
John Hill, of Prees.
Andrew Corbett, of High-Hatten.
John Smitheman, of West Coppice.
Owen Roberts, of Wem,—esqrs.

THE indictment consists of several counts; and states, that Samuel Grindley, gentleman, is deputy registrar of the consistorial court of the bishop of Bangor; and being such, had of right the occupation of a certain office adjoining to the cathedral church of Bangor, called the Registrar's office:

That the defendants, intending to disturb the said prosecutor in the execution of his said office, and to trouble the peace of the king, on the eighth day of January 1796, unlawfully entered the said office, and for the space of one hour, against the will of the said Samuel Grindley, stayed, and during the said time made a disturbance therein, and did assault, and evilly treat the said Samuel Grindley, and did affirm, that the said Samuel Grindley unlawfully assumed the said office:

That the defendants did stir up ill-disposed persons therein assembled, to expel the said Samuel Grindley out of the said office:

That the said defendants did assemble to disturb the peace of the king; and a certain room, called the Registrar's office, did enter, and disturbance then and there did make, and

upon the said Samuel Grindley did make an assault:

That the defendants did unlawfully assemble to disturb the peace of the king, and upon the said Samuel Grindley did make an assault.*

[This being a proceeding in the court of King's-bench, the personal appearance of the defendants was not necessary,]

Counsel for the Prosecution.—Mr. Adam, [Now, 1819, Lord Chief Commissioner of the Jury Court and a Baron of the Court of Exchequer of Scotland; and a member of his Majesty's most honourable Privy Council] Mr. Sergeant Williams † Mr. Manley, Mr. Ellis.

Solicitor.—Mr. Grindley the prosecutor.

Counsel for the Defendants.—The Honourable Thomas Erskine [afterwards Lord Chancellor Erskine]; Mr. Plumer [afterwards, successively, Vice-Chancellor of England, and Master of the Rolls]; Mr. Leycester, Mr. Milles.

Solicitor.—Mr. Andree.

Mr. Ellis opened the pleadings.

Mr. Adam.‡—May it please your Lordship, Gentlemen of the Jury.—You have heard from my learned friend who has opened the

* The indictment was originally preferred in the court of Great Sessions, in Wales, where the offence was charged to have been committed, but for a more impartial hearing, was removed into the court of King's-bench, and sent down for trial in the next adjoining county, before a special jury, at Shrewsbury, where Mr. Adam and Mr. Erskine attended on special retainers; the former as counsel for the prosecution, and the latter for the bishop and the other defendants.

† Mr. Sergeant Williams was prevented from attending by indisposition.

‡ Some inaccuracies in the former report of this address to the jury have been obligingly pointed out to me by my highly respected friend, the learned person who delivered it, and they are here corrected accordingly.

* Taken in short-hand by Joseph Gurney.

pleadings to you, that Samuel Grindley is the prosecutor, and that he is deputy registrar of the diocese of Bangor.—You have heard, likewise, that the defendants are, the bishop of Bangor, three clergymen, and a gentleman who is agent to the bishop.

In the outset of this cause I have already learned enough, from the manner in which my learned friends have received the opening of the pleadings, to show me that they seem to have an inclination, as it were, to make that a jest, which, I can assure you, is a matter of extreme seriousness.—Gentlemen, I introduce it to you with all the anxiety which belongs to a person who is unaccustomed to address you.—I introduce it with the anxiety which belongs to a person who is to maintain a conflict with abilities that are seldom unsuccessful. I shall open it to you, I do assure you, in the pure spirit of moderation and of candour; and, if I might say so, in a question of this sort, in the pure spirit of the true principles of christianity; that is, of wishing *that all mankind should do unto others as they wish to see done unto themselves.*

Gentlemen, I wish to call your attention to it seriously, and will just take the liberty of stating, why you are called upon to judge in this cause.—The question to be tried, did not happen within your ordinary jurisdiction: it was not in this county that the offence, which is complained of, took place: but an application has been made to remove it here; and it is possible that such an application might produce some prejudices in your minds, as if there had been something in the conduct of the party, for whom I have the honour to appear, which has made it improper to permit the question to be tried where it arose. The application to remove the cause from Wales to the nearest English county, was founded upon an affidavit of the other party, which I have not seen, and was granted by lord chief justice Kenyon, who undoubtedly exercised his discretion wisely and justly, as he does upon all occasions. He thought, that, under the circumstances stated by those concerned for the bishop of Bangor, and upon the affidavit made by those who are prosecuted (without any opposition or interference of any sort or kind whatever by the person who appears here as the prosecutor), it was fit to remove it.—When he did so, I know he removed it to a tribunal of uprightness, and honour.—I know he removed it to a situation where, I am confident, intelligence and integrity will alike prevail; and I am by no means afraid of the mere circumstance of its being removed, having any influence upon minds like yours.

Gentlemen, there may have arisen prejudices in this, as there do arise prejudices in many causes. Undoubtedly, this is not the first time that this matter has been the subject of conversation and discourse; probably it is not the first time, that even you, who are immediately to try the cause, may have heard

of it. It is my duty to my client, and to the public likewise, if there should have been any such conversation about this prosecution, to remove all those prejudices, to remove all the impressions that may have been received, not only from your minds, were it possible you could have received them, but from all those that stand around. I say it is important to my client, and it is important to the cause of public justice, that I should endeavour to remove them.

Gentlemen, I beg leave to state to you, in the temperate spirit which I have professed, that this is not a question, in which the general religious establishment of the country is at all involved—it is a question, I can assure you, which is confined to the individuals who appear upon this record. It reaches no farther than *their* conduct, on the *particular* occasion. It is a question which cannot, I am sure, have the least effect to the prejudice of that doctrine which the christian religion inculcates, or to the prejudice of that rank and situation in the state, (so important to the well-being of society), which the principal defendant holds. This prosecution does not press on doctrines or on principles which tend, not only to our happiness hereafter, but to the good government of the world in which we now live. I pledge myself, then, that, when you come to hear this case, you will find that the facts which I shall prove are confined singly and solely to the parties named in this indictment.

There is another circumstance to which I could wish to call your attention, before I enter into the merits of the case—namely, that although a church dignitary stands in the front of those indicted, *that* is no reason whatever why this indictment should not have been preferred; for if the facts which I have to state to you, and which I shall afterwards prove—if the principles of law which, under the direction of the learned judge, I shall have the honour to lay down to you, are correct, you will find that public justice *must* be satisfied by a verdict of guilty, notwithstanding the rank and situation of the first individual who is indicted.

It is a painful thing to me, not only on account of his rank and his situation, as a bishop of the church and as a peer of parliament, to address you upon a subject of this sort; but it is more so when I consider, that, in the intercourse of my professional life, I have had frequent occasion to see that person discharging duties in another place, in a judicial and legislative capacity: I have often had the honour, and I will say too the satisfaction, to address him in that station. Gentlemen, I can assure you that I speak with no personal feelings against the bishop; they are all naturally on the other side. But what is more, I can assure you that my instructions are, to conduct the cause in a pure spirit of temper and moderation, such as I have already described to you.

This, gentlemen, is not the only time when dignitaries of the church have been indicted, and found guilty. You have but to look back to the bead-roll of the State Trials, and you will find many instances of the sort. You have but to reflect a few years back, when a person, upon an indictment removed in the same manner, though not a bishop yet a dignitary in the church, was brought into this court, for reasons similar to those which bring you now here to try this indictment. Those who heard my learned friend* upon that occasion, or who have read the history of that period, cannot forget the uninterrupted stream of splendid eloquence and of powerful talent, which has been rolling on, with increasing force, from that period to the present moment, and which, then almost in its infancy, was exerted in a question similar to that in which I have now the honour to address you. This shows you that there was, within our own memory, in this very place, a prosecution of a church dignitary for a misdemeanor, as there is upon the present occasion.

I will state plainly to you, why this question is tried, and why you are called to deliver a verdict upon it. It is, in the first place, upon a principle of public justice, in order that the justice of the country may be satisfied.—The prosecution is likewise proceeded in, on another principle, which I am sure I am warranted by the law of the land to state as a sound one; it is founded in an honest, fair, justifiable attempt, upon the part of this prosecutor, to vindicate his own character through the medium of this prosecution. When I assert that to you, I state a legitimate ground of prosecution, and one that is consistent with the laws of the country; for it is in the power of any individual to use the name of His Majesty for the purposes of public justice; aye, and for the purpose of vindicating his own character and reputation. It is done every day in the case of libel, and may equally be done in the case of assault, or riot.

The situation of this prosecutor was, and is, that of a person who gained to himself an honest livelihood, by industry in his profession, and in the different situations which he held in the part of the country where this offence was committed. He found himself at once in the eye of that public where he lives, in the circle of that community and society to which he belongs (if he did not take some method of bringing this matter forward to the public observation of the country, and of bringing these defendants forward to receive the public justice of the country), in the risk of being, in all probability, deprived of the honest earnings of his industry, and of the situations which he held for the benefit of himself, and the support of his family.—These are the principles upon which this prosecution

is brought forward; and they are principles which do not involve any thing of a vindictive spirit; they are principles upon which every honest man daily acts; they are principles upon which every honest man may legally act. Who could have blamed Mr. Grindley if he had brought an action of damages against the bishop, for the injury he has suffered? What is the situation in which he stands here—not bringing an action for damages, indeed, but preferring an indictment? I will venture to say, that, under the circumstances of this offence, and agreeably to the matter charged in this indictment, a prosecution leaves the defendants more ample means, and a better mode of defending themselves, than if an action had been brought, and they had been put to plead a justification to that action. These are the points to which I wish to call your attention, in order that your minds may come coolly, deliberately, and without prejudice, to the trial of this cause.

Gentlemen, the indictment, as you have heard, states, that the parties upon this record were guilty of a riot, by entering into, and doing certain acts in the office which belonged to the prosecutor, as deputy registrar of the diocese of Bangor. It states nothing but a riot. There is no count in this indictment singly for a common assault, although it is the common mode, in drawing indictments of this sort, to conclude with the charge of a common assault, with a view of securing a verdict, in case the facts should not come up to the proof of a riot. I wish to call your attention particularly to this, because it shows, there was no spirit to catch these parties, for conduct, which, if it does not amount to a riot, is not the subject of which this prosecutor means to complain.

It is necessary for me (and I shall do it very shortly indeed, before I enter into the state of facts which I must lay before you) to explain the law upon the subject of riot. There are various offences which people commit, congregated together, which receive different denominations in law, from the simple offence of an affray, up to that of a riot, which it may be well for you to know, in order that you may be able to apply the evidence when you come to hear it. The case of an affray, is a matter which arises accidentally, without any premeditation or intent.—The next in order, is an unlawful assembly; that offence consists in persons assembling together, to do some act respecting private property (not concerning the affairs of the public), and separating without doing any act whatever. There is another case, commonly denominated a rout, which is, advancing towards the act, without arriving at it. The highest in order, is a riot; in which there must be these ingredients: in the first place, there must be three or more persons engaged in it; in the next place, there must be an intent and purpose in the parties to commit a riot; and, in the third place, it is essential

* Mr. Erskine, as counsel for the Dean of St. Asaph. See Vol. 21, p. 847. of this Collection.

that it should have for its object some matter of private concern. When you come to hear the evidence, you will always bear this definition in your mind; which, I am satisfied my learned friend will not contradict, and I am equally satisfied my lord will support me in, when his lordship comes to address you.

I pledge myself, then, to prove, that the bishop of Bangor, and the other defendants upon this record, were guilty of that which I have last described—that there were three or more of them—that they committed a riot, in a matter respecting private property, and that they had an original intent and purpose in the act which they did. With regard to the intent and purpose; you will always observe this—that, intent and purpose may either arise from the facts and circumstances that exist at the time of the transaction, which, by inference, establish a necessary presumption of an original intent; or, it may be made still more palpable to you, by showing a line and tissue of conduct which necessarily involves that intent and purpose, and, therefore, renders presumption unnecessary, by giving you clear, demonstrative, decided proof, arising from the acts and transactions of the parties, establishing a premeditated design, intent, and purpose, in the acts which they did. You will find that this last observation will apply, most materially and forcibly, to the evidence I am about to lay before you, and the circumstances I am about to recite.

I profess, gentlemen, again and again, that I have no object in view, but making you understand this case; and if, in the course of my address to you, I either elevate my voice, or give into a manner of action that is contrary to the utmost moderation, I trust you will attribute it to habit, and not to intention.—I have no wish, but coolly, deliberately, and calmly, to make you masters of the facts, the circumstances, and principles, upon which this important cause must be decided.

Gentlemen, I have already stated to you, that the prosecutor of this cause was deputy registrar of the consistorial court of the diocese of Bangor.—It is essentially necessary that I should make you acquainted with the nature of that office; and not only that you should become acquainted with the nature of the offices of registrar and deputy registrar, generally, but that you should likewise be made acquainted with the *particular circumstances* and *local situation* of the prosecutor and his office.

The deputy registrar is appointed by the principal registrar. The general nature of the office of registrar is, that he has the custody of all the archives and muniments that relate to the spiritual court of the diocese; that is, he is to register all the acts of a juridical nature; and he is, besides that, the registrar of all the wills and testaments of the persons who die within the diocese.—So that, you observe, it is an office of great importance, and extending to the interest and pro-

perty of a vast portion of the community; that it is an office, where the safe custody of the different archives and muniments is of the utmost consequence.—Certainly, according to the law of the land—according to decided cases, to which, if it is necessary, I can refer his lordship, it is competent to appoint a minor to the situation of registrar; and, accordingly, the present bishop of Bangor, upon the resignation of the former principal registrar, did appoint a nephew of his, a minor, to be principal registrar.—As it is competent to the bishop to appoint a minor to be principal registrar; so it is equally competent that that minor should, by some mode, appoint a deputy.

The reason why a minor can, in this case, deviate from the general rule of law, and do an act appointing a deputy, is, because it follows, from necessity, that the business of the office of registrar *must* be discharged. If the minor could not appoint, of course the duties of the office could not be discharged, and therefore, *ex necessitate rei*, from the necessity of the case, the minor is at liberty to appoint a deputy. But the power of the minor goes no farther—there the law stops. The general rule of law is, that a minor can do no act—that he has no will, because he is not supposed to have understanding to act for himself. The exception, in this particular case, is, that the minor does act for the purpose of appointing his deputy; but the necessity goes no farther. But according to a very recent decision, as might well be supposed from the nature of the thing itself, the rule of law is, that this registrar cannot remove his deputy; as was found in this very case, on an application to the Court of King's-bench. Though this may be tedious, it is an important part of this business to know that an application was made to the Court of King's-bench for a mandamus, calling upon the present prosecutor, Mr. Grindley, to deliver over to a person, of the name of Roberts, all the muniments within his power, and to deliver up to him likewise the keys of his office, and thereby give him possession of the place where the business is conducted, and where the muniments are preserved.—The result of that application, for the order of the court to compel this to be done, was a denial by the court; and I have authority to say, from those who heard it, that the ground upon which it was denied was this: lord Kenyon was of opinion, that it was essentially necessary to apply to the court of Chancery, to appoint a proper guardian for the minor, that there might be sufficient authority to appoint another deputy registrar in the stead of Mr. Grindley; but that he, being in possession of this office, and Mr. Roberts not showing a right to the possession of the office, it was impossible for the Court of King's-bench to grant the order applied for.

I have then, I conceive, established clearly, in the first place, that Mr. Grindley was in

possession of the office; and, in the next place, that there was no legal power to remove him.

—Consequently, although, from necessity, the minor may appoint in the first instance, yet, if the office of deputy registrar is properly discharged, that necessity not existing for the removal, the deputy registrar must remain until the principal arrives at the years of majority; or until he has such a guardian appointed by the Court of Chancery, as is capable of acting in such a subject matter.

There is another material circumstance respecting the law upon this subject—namely, that where a registrar is appointed by the bishop, and a deputy appointed by the registrar, and the principal registrar is a person not in a situation to act, there is no power and authority, on the part of the bishop, to remove the deputy registrar. The bishop, by law, has no power or authority whatever to remove the registrar or deputy registrar, except in the following manner: If the registrar, or his deputy, does any act or acts which are, in their nature, contrary to law; if they do not act consistently with the duties of their office, then, in that case, undoubtedly, the bishop may suspend, but his suspension is confined to “a year or more;” and it has been decided, that the words, “or more,” do not extend indefinitely to any period, but must be confined to a reasonable period subsequent to the year. Gentlemen, I beg you will bear this position of law in your mind, because you will find, throughout the whole of this cause, that the bishop has had no fault whatever to find with Mr. Grindley, in the discharge of the duties of his office; for he has never thought him amenable to his jurisdiction for the purposes of suspension; that he must have conceived, therefore, that in the discharge of the duties of his office, he has acted like an honest, faithful guardian of his public trust. If he had not done so, would not this bishop, who, as I shall prove hereafter, attempted first by art, and afterwards by force, to remove him from that situation, would he not have made use of his suspending power? Would he not, near the period of the minor registrar coming of age—which would have been in less than a year from these transactions—would he not, I say, have suspended him “for a year or more,” in order that the trust might not have been discharged improperly? by which means, the minor, when he arrived at that age of twenty-one, when he would have the free exercise of his own will, might, according to law, have exercised the power of annation over his deputy at his pleasure, without assigning any cause whatever for the removal?

It is material, in the discussion of this cause, and most material to your understanding the evidence, that you should know the particular situation of the office; I mean the local situation of the place in which the muniments and records are kept. It is, as I understand, built adjoining to and upon the cathedral church of Bangor; there is a flight of steps

rising to it, and you go through a porch, on which there is an outer door.—Having got within the porch, there is an inner door opens to the register-office; the office is directly opposite to the bishop's palace; there is nothing but a court yard between them; and it is so near, that it is said every voice may be heard from the one place to the other; of that, however, I am by no means certain, but it certainly is within sight of the bishop's palace, adjoining to, and built upon, the cathedral.

I have stated the duties of this office; I have shown you that they are grave and serious duties: I have stated the responsibilities of this office; I have shown that they are grave and serious responsibilities: I have stated the nature of the muniments kept in this office, and described the place in which they are kept: and I contend, I think without the hazard of contradiction by my learned friends, that the person who was thus appointed deputy registrar, was irremovable, except by the mode of suspension by the bishop in the manner I have mentioned. He was not removable by the minor, but through the medium of a guardian, which guardian must be appointed by the court of chancery.—The deputy registrar, thus invested with this office, so charged with its duties and responsibilities, had as good a right and title to possess that office—to possess the house or place which I have described—to maintain it—to take it again if it were taken from him, and to defend himself in it, as any Englishman has to defend his house, emphatically denominated his CASTLE.—It is impossible to compare it more accurately. All the circumstances that belong to the sanctuary of a house, belong to the sanctuary of this office. The sanctuary of our house is for our repose, quiet, and security; it is, that we may protect our families. The sanctuary of the official house is not that the family of an individual may be protected, but is for the protection of the interests of an extensive community, it is in this case, that all wills devising personal estates, that all the records in the office of a legal and a judicial nature, that all the interests of a large and important diocese, may be protected. Then, all the arguments for a man's maintaining and defending the possession of his house, apply infinitely stronger to an office charged with such responsibilities.—It is impossible that he can secure, it is impossible that he can maintain that, which is essential for him to justify his conduct towards the public, without maintaining possession of the building, where these things are preserved; and every person who attempts to trespass upon it, is a trespasser in the eye of the law; every person who makes a riot in it, is amenable to the justice of his country.

I have described the situation of this official house; it is built adjoining to the cathedral; the wall of it runs into the wall of the cathedral.—I have described the nature of the office: it is a spiritual office.—The great

Roman orator giving the definition of a house says, "Quid enim sanctius, quid omni religione munitius, quam domus uniuscujusque civis?" What can be more holy? What can be more protected by every principle of religion, than a house?—This is more holy; this ought to be more protected; this is a spiritual office; a spiritual office carried on in a building annexed, in local situation, to the cathedral church. Thus characterized by duty and annexed by situation, this gentleman, Mr. Grindley, was bound, for his own sake, for the sake of the public, with whose interests he was intrusted—for the sake of the community of the diocese to which he belonged—by the sacred situation of the place of office, to possess, and protect his possession in it, that the muniments and the archives might be preserved.

I am sorry to have detained you so long in the preliminary part of this case; I hope however, I have not wandered, but have confined myself accurately to the question before you. I think I have done no more than laid that ground, which is necessary for your understanding the facts: and I now come to state to you, precisely and accurately, what the nature of those facts is.

I told you, originally, that I aim only at distinctness. If I have that quality, I have every thing I can wish. In order to be distinct, and in order to show you with what mind and intent this riot was committed, I anxiously intreat your attention to the commencement of the connexion between Mr. Grindley and the bishop of Bangor.

Early in the year 1792, Mr. Grindley was appointed agent for the bishop of Bangor. In the month of February of that year, the bishop appointed his nephew, a minor, to the situation of registrar of the consistorial court of the diocese. In the month of March 1792, Mr. Grindley was appointed deputy registrar. He continued to act in the situation of deputy registrar, down to the year 1794, when, for the first time, he saw the minor, who confirmed the appointment, and who treated him as his deputy registrar. The bargain was, that Mr. Grindley was to pay his principal seventy pounds a year.—He discharged the regular payments.—He continued to act in his office, without any offence to the bishop: and that he had committed no offence in his office, is clear, otherwise he, the bishop, would certainly have exercised his power of suspension. He continued, I say, to act in the discharge of the duties of his office, down to the autumn of 1795. Here then begins the history which gives origin to this prosecution.

The approach of a general election led the bishop of Bangor to think, that he might perhaps, be serviceable to some of his friends; and he thought those immediately under him were likely to be influenced by him.—He applied to Mr. Grindley, for his interest in the county of Caernarvon. His application did not meet with the reception, or with the answer,

he expected. Mr. Grindley thought, as I hope every Englishman thinks, that he had a right to the free exercise of his franchise, and of his influence; but although he thought so, I can assure you that he behaved with great temper and moderation.—Mr. Grindley now found, that his connexion with the bishop became a connexion that was not so comfortable, if they were not to agree in their election interests; he thought it right, therefore, to resign the office of agent to the bishop; and he accordingly resigned his place of agent in the month of January.—At the time he did so, he signified expressly, that, on the 22nd of February, he would resign the office of deputy registrar.—Now, could any conduct be more moderate?—You may, perhaps ask why he did not resign the office of deputy registrar at the time he resigned the situation of agent? The reason he assigned was this, and it is a valid and substantial reason—that his year of appointment as registrar ended upon the 22nd of February 1796; that, by retaining the office till that time, he should be enabled to make up his accounts, to settle all his business, and then he would quietly take his departure from it.—Could any thing be more moderate, could any thing more be reasonably wished for by the bishop? If this registrar had become obnoxious to him, because he did not obey him in matters with which the bishop, I must say, ought to have had no interference, either as a bishop or as a lord of parliament; if he wished to get rid of Mr. Grindley, might he not have had that patience which ought peculiarly to belong to the clerical character of those who appear as defendants upon this indictment? Might he not have had patience for but a little month, till the deputy registrar voluntarily resigned his office? There is something in this conduct of the bishop, not to be easily accounted for and which can only be explained by the influence of the holy function on the human character. There is a profound and witty remark made by a great philosopher respecting the clergy. It is said, "that having found, what Archimedes only wanted, another world on which to fix their engine, they move this world at their pleasure."—That saying may go far to expound this conduct. In all spiritual matters, it is a wise, a just, a true maxim, calculated to explain the principles upon which the clergy justly and beneficially for society, possess that influence over mankind, which ought to belong to their character and situation in all spiritual affairs—but when they travel from spiritual into temporal concerns—when they quit the paths on which as pastors they should only tread, and look only to the concerns of this world—when they interfere in politics or in elections, that character, which directs their influence in the clerical function, unfortunately follows them into their temporal concerns. If they are disappointed, they cannot brook it.—They have been taught to regard mankind as persons

whom they are to govern at their pleasure—they are incapable of smoothing the matter over, as men accustomed to be thwarted in the ordinary concerns of life; and their spiritual character uniformly follows them into temporal concerns, if they are imprudent enough to mix in them. This is vouched by the history of the world, in all ages: it is illustrated most particularly by the history of this country. Who ever heard of Sherlock or Lowth interfering in such matters? No! They were enabled in their function to move this world at their pleasure, because their lives were spiritual and holy. Who has not heard that Wolsey and Laud were of a different character and description? The *Ego et Rex meus* of Wolsey, and the violence of Laud against the privileges of the people of England, are equally to be collected from that witty, wise and just maxim to which I have alluded. Such is the situation of the persons concerned.—Gentlemen, it does not signify whether the scene is in the great world, or in the county of Caernarvon: whether it is transacted in the palace of Whitehall, or in the church-yard of Bangor;—the same causes will always produce the same effects; and I cannot account for the bishop not having accepted of this moderate, of this attentive, of this happy proposition of resignation by the deputy registrar, but because he had deviated from his ordinary course: because from spiritual he had turned aside into temporal concerns; because he had forgotten for a time the concerns of that pure and humble religion, of which he is an eminent pastor, and had been drawn aside by the peculiar interests of friendship, by the strong ties of connexion, or by something else, in order to act in the manner which I have described to you.

In fact the resignation has not been accepted at all; and the transactions, which I am about to relate, will show the reasons why it has not been made, and will prove, that it was not possible for the deputy registrar to make it with safety.

Mr. Grindley found the bishop had become hostile to him; he found, he was no longer safe in resigning it into hands, that could not legally accept the resignation; he found, he could not have that confidence which would have taken place, if it had been left to his own freedom and choice; and that, after he had resigned into the hands of a minor, he would, in point of law, have retained all the responsibilities of the office, without being, in fact, in the office, to discharge the duties:—Therefore it is, he has not resigned the office. But the transaction which I am about to state to you, and I am now come to the real question in the cause (though I humbly think, that nothing I have said is irrelevant)—the transaction I am about to state to you, will unfold the whole.

Between the fourth and the eighth of January 1796, which you see was a month previous to the term of the proposed resignation,

these transactions took place.—First of all, the bishop, in the absence of Mr. Grindley, the deputy registrar, sent for the seals of office; and he obtained one seal. I think the other seal Mr. Grindley's clerk had not in his possession, and it was not delivered.—This was intimated to Mr. Grindley; and Mr. Grindley, imagining that the bishop, having obtained one seal, might possibly attempt to obtain the keys; he, being at that time in Anglesey, wrote to his clerk to beware not to give the bishop the key of the office if he asked for it. The bishop did ask for it; and was refused.—Upon the 7th of January Mr. Grindley returned, and found that his office had been broken into.—He ascertained, as I shall prove, from the bishop's own mouth, that the bishop had given directions to break open the window of the office, to take the locks off the door, and put on other locks.—In this situation, Mr. Grindley found himself, respecting an office, for the duties of which he was legally responsible; for he is, both in law and in fact, deputy registrar, and has been so from the year 1792, down to the present time, without any attempt to cast a slur on his character in the discharge of his duties.

Gentlemen, I come now to the principal facts; and I can assure you I will act in the spirit which I professed at the outset. I wish to state every thing candidly to you; I have nothing to hold back. I do not mean to say that, in every minute particular, it is possible to justify the transactions for moderation and for prudence. Offensive acts may dispel moderation, and may ruffle the temper, and yet I think, when you examine the transactions of Mr. Grindley, you will see, under all the circumstances, that they generally were neither immoderate nor violent.—Mr. Grindley's offer of resignation had been scoffed at, and rejected.—He had been treated in such a way as to make it natural to suppose that he would be exposed as a culprit, in the discharge of his duty, to the whole community to which that duty appertains. He found, that it was essentially necessary for him to know in what state the muniments and archives were, of which he alone had a right to the possession. He found the means of entrance debarred, and, therefore, determined to get admission to the office: and, having got admission, he determined to maintain himself in the possession of it, as he had a full right to do.

In the morning of the 8th of January, Mr. Grindley went to the office, with the means of getting admittance into it. You will observe, that the first attempt to get possession of the office had been on the part of the bishop—You will always recollect, that the bishop has no earthly right to the possession of the muniments of that office, as long as the registrar properly discharges the duty of the office.—He has no right to keep the registrar out of his office, but the registrar has a right to keep all mankind out of it, except those who come upon business, and except the bishop when he

comes in the discharge of his duty as *Bishop of Bangor*.—Mr. Grindley imagined, from the violence that had taken place before, that is to say, from the violent breaking into the office originally, and from the offer of compromise on his part, and even of resignation, being wholly rejected, he imagined, and it was natural so to imagine, that force would be opposed to force, when he once got possession of his office; and therefore, undoubtedly, Mr. Grindley went provided, so as to secure himself against the possibility of that force depriving him of his office.—Gentlemen, I insist that while he was in possession of his office, he had a right so to do. All this will be proved—I say it will be proved; because I know Mr. Grindley, who is the first witness, is a person beyond the suspicion of trifling with his oath.—The oath is, “that he shall speak the truth, the whole truth, and nothing but the truth.”—It has been uniformly expounded, that a person, who does not speak the whole truth in a court of justice, is as criminal as he who speaks a direct falsehood.—I feel myself bound in duty and in conscience, as an advocate, to state to you the whole truth; and Mr. Grindley is a man of that conscience, that he will speak the whole truth in the manner in which the thing happened. It will then be for you to judge, under all the circumstances; and I think that whatever opinion you may form with regard to Mr. Grindley’s rashness in his manner of getting possession of the office, and his determination to maintain possession of it, you will be convinced, that the bishop and those indicted, were in fact guilty of a riot, for endeavouring to get possession of it, and coming and interrupting him in the manner I shall describe and prove.

Mr. Grindley went with pistols in his pocket; but it will be proved, *these pistols were unloaded*.—Now, I can assure my friends (whatever gestures they may make) that I am not in the least afraid of this fact.—I say, his going with *unloaded* pistols, proves, that he had, in regard to getting possession of the office, no intent of offence whatever.—He took powder and shot, with which, when he had got possession, he loaded his pistols—which proves that he was determined, being in peaceable possession of his office, to maintain that possession; and I contend, that the deputy registrar of the diocese, under the circumstances I state, had a right so to do.—I say, that every argument which applies to the case of a man’s house, and to his right to defend it as his castle, applies to this case.—Mr. Grindley, after he had opened the outer door in the porch, in order to prevent any riot, and for the purpose of intimidation, threatened one of the persons who came from the bishop’s house to interrupt him, with an unloaded pistol; for it will be proved, that the pistols were loaded at a subsequent time. After this first attempt to disturb him, there was a considerable interval; and during this

interval Mr. Grindley got into the inner door. Mr. Grindley being thus in the office, the bishop and various of his servants arrived.—The bishop holloed with a voice so loud (as will be proved to you) that Mr. Grindley did not know it; his passion was so vehement, that it was absolutely impossible to distinguish his voice.—The moment Mr. Grindley knew it was the bishop, he said he had no objection to the bishop’s being let in, and he desired his servants quietly and peaceably to retire to a farther corner of the room.—Mr. Grindley then came forward, and said, that whatever business was to be done, he was ready to do it; that he considered himself as the legal officer, and he was then in the quiet possession of his office; that, with regard to his lordship, he was perfectly willing he should come into the office, but he begged that his lordship’s boisterous and tumultuous conduct might cease.—I really wish, rather that the witnesses should describe what passed afterwards, than that I should.—But instead of that tumultuous conduct ceasing, the bishop approached first to Mr. Grindley, afterwards to his servants, with threatening gestures, and with threatening words, laying his hands upon them: and he was assisted by the four other persons indicted, who afterwards came into the office, whose actions and words were precisely of the same kind and description.

Gentlemen, one of the grounds of riot which you have to try, is this, that there was a person, legally entitled to the possession of his office, illegally forced from that office; he had taken possession of this office, and remained in the quiet possession of it.—Now, whether he did so in a manner that was perfectly calm, and such as an unconcerned spectator may approve, I do not know; but I am addressing myself to persons who have human passions, who know what human nature is; and I am sure, in an outrage of this sort, committed after a voluntary offer of resignation, such as I have stated; after a conduct so peaceable and quiet, that they will feel even a worm, if trod upon, would have turned again.—Mr. Grindley had got quietly into the possession of his office, and then, after a lapse of time, this office was again attacked in the riotous, tumultuous, and extraordinary manner which the witnesses will state, but which I forbear detailing, because, in the first place, it is unnecessary for your understanding the cause, and in the next place, it is painful for me to state it. This disturbance went on a considerable time, and at last it ended only by the arrival of persons, whose sex and character I have too great a respect for, to introduce into the cause, more than just to say, that by the intervention of Mrs. Warren, and two ladies, the bishop was at last quieted, and withdrawn from the riot. There the business ended. Gentlemen, this is the case which you have to try; and I think I can venture to say, that if the facts are proved in the manner I have described, and I take upon me to say,

I have stated them most correctly, it is impossible for you not to find a verdict for the prosecutor.

Gentlemen, it would be in vain, and an absurd thing in me, to detain you with any particular address to yourselves. I have the honour of knowing hardly any of you personally, although among the jury there are some gentlemen whom I have had an opportunity of seeing in another scene in life. I know your characters, and I know that however you may feel yourselves bound to protect the ministers of our church, though I think this prosecution can have no effect upon any but the particular churchmen engaged in this transaction, you will yet guard yourselves against deviating from those principles according to which you are bound to act, and that you will find according to the evidence.

Gentlemen, there is no principle implanted in the human mind, stronger or more natural than the sympathy which we feel for the situation of persons of high rank and condition: it is this sentiment which binds society together; and is most admirably infused into our nature, for the purposes of good government, and the well-being of civil order. But whatever his rank may be, that rank can never stand between a defendant and the proof of the fact, with a jury of Englishmen. They know their duty too well, to let feelings of sympathy affect their minds in defiance of proof.

Consider what is the peculiar situation of these defendants; reflect, that they are set apart by the laws of the land, and the regulations of the Christian religion, for the purpose of preaching the doctrines of Christ. Our law has been so peculiarly cautious with respect to their character, that even when it empowers the civil magistrate to quell a riot by calling to his assistance every other member of the community, it excepts, with women and children, the clergy of the land: I have brought before you persons of that description, who, instead of claiming the exemption, have themselves been guilty of the riot.

[The witnesses were examined apart, at the request of Mr. Erskine.]

EVIDENCE FOR THE PROSECUTION.

Mr. Samuel Grindley sworn.—Examined by Mr. Manley.

Were you at any time, and when, appointed agent to the bishop of Bangor?—I was.

When?—In the month of February, 1792.

Were you, at any time after that, appointed to any other office?—About the same time.

Mr. Erskine.—That must be proved by the appointment itself.

Mr. Manley.—Did you, in point of fact, fill any other office than that of agent, under the bishop of Bangor?—Yes, I did.

What was that?—Not under the bishop; under Mr. Gunning I held the office of deputy registrar.

When did you begin to hold that office?—About the 14th or 15th of February, 1792.

Did you continue to discharge the duties of that office?—I continued to discharge the duties of that office till the 22nd of February last.

Where did you discharge that office?—At the Registrar's office, adjoining to the cathedral church at Bangor, in the county of Caernarvon.

You said you were appointed deputy to Mr. Gunning?

Mr. Plumer.—He did not say that.

Mr. Manley.—You acted in the office?—Yes.

Did you ever see Mr. Gunning after that?—Yes, the latter end of September, or the beginning of October, 1794.

Mr. Plumer.—Which Mr. Gunning?—The registrar.

Mr. Manley.—Had you any conversation with him?

Mr. Erskine.—Any conversation with him!

Mr. Manley.—Did you pay any money to the registrar?—Not to himself.

Did you pay any upon his account?—I paid to the bishop of Bangor, on the registrar's account—

Mr. Erskine.—I am sorry to trouble your lordship—I do not know that it is very material that I should do, what I am about to do; but we ought to adhere to the rules of evidence—

Mr. Manley.—I will put it out of all question. In whose name was the office of registrar held?

Mr. Justice Heath.—Ask him who was in possession of the office of registrar?

Witness.—Mr. Gunning, a minor.

Mr. Manley.—You paid seventy pounds a year to the bishop, on account of Mr. Gunning the younger?—Yes.

Did the bishop know you paid him that sum on account of Mr. Gunning the younger?—Yes.

Mr. Erskine.—Mr. Manley ought to recollect there are other defendants upon this record, besides the bishop of Bangor—if you would prove that this man was in possession of the office, be it so, I have no objection to that; but you cannot go on farther than that, to prove that he had the legal appointment of registrar.

Mr. Manley.—You said the bishop made the bargain between you and Mr. Gunning, respecting the registrarship?—He did.

What was the bargain between you and the bishop?—The registrar before Mr. Gunning, it was thought, gave a hundred pounds a year: I mean was paid a hundred pounds a year.

What were you to pay?—Seventy pounds a year to the registrar.

In consequence of that bargain, did you enter upon your office as deputy?—Certainly.

Did you fill that office up to the 22d of February last?—I did.

Did you continue to pay that salary, seventy pounds a year, from the time of your becoming deputy?—I did, till the 22d of February last, and then I offered to pay that to any person who could receive it.

Did you afterwards see Mr. Gunning, the registrar?—Yes.

Had you any conversation with him?

Mr. *Erskine*.—Conversation with him!—why do not you call him?

Mr. *Manley*.—Was it in the bishop's presence?—Yes.

When was it?—I think in the latter end of September 1794, or the beginning of October.

Relate what passed between you and Mr. Gunning in the presence of the bishop?—The bishop brought Mr. Gunning to me, and told me he was his nephew, the principal registrar, and introduced him to me as the principal registrar, and introduced me to Mr. Gunning as his deputy. Of course, I had some conversation with the registrar; he was then of about the age of seventeen; I asked him if I gave satisfaction; he said, I pleased his uncle, the bishop, that the bishop was satisfied, and of course he was perfectly satisfied.

Was there any complaint of your not doing the duties of your office at any time?—None, that ever I knew of.

Had you any complaint from the bishop, or any person?—Nobody laid that to my charge.

—I said, I paid what is called the farming of the office, to the bishop; he said, I know you do—I hope the office answers your expectation.

In the year 1795, had you any conversation with the bishop respecting the approaching election?

Mr. *Erskine*.—Can this possibly have any relation to the question? I object to it as totally irrelevant.

Mr. *Manley*.—I am asking the witness to state what passed between the bishop and him, relative to the election, to show the motive upon which the bishop afterwards acted.

Mr. *Erskine*.—Your insisting upon the question, shows the motive of the prosecution pretty evidently. We are here upon an indictment for a riot, which is charged to have been committed upon the 8th of January, in the year 1796. For the purpose of doing that, which my learned friend most honourably and candidly disavows, for the purpose of throwing dirt at the bishop, we are to begin about something that passed relative to the election.

Mr. Justice *Heath*.—All this is matter of aggravation; and matter of aggravation ought to be laid before the Court of King's-bench—let us see whether improper force has been used in the course of this business, so as to constitute a riot—this is for the consideration of the Court, who is to pronounce sentence, in case of a conviction.

Mr. *Manley*.—Be so good as to describe the situation of the place in which you conducted the business of the registrar's office?—The registrar's office is a building adjoining

to the cathedral church at Bangor, under the chapter house, opposite the bishop's palace.

How far distant from the palace?—About 150 yards distant—there is a flight of steps by which you ascend to the outer door of the office—then you go into a passage, which they commonly call the hall.

Did you employ your clerks in that office?—Always.

Who had the keys of that office?—Generally the clerk that was there.

Your clerk?—Yes.

Did you pay that clerk?—Always; I had a resident clerk there, and used to send other clerks to his assistance—I superintended the business myself.

You had a resident clerk there, to whom you entrusted the key?—Yes.

Had you made any offer, or did any conversation pass between you and the bishop, touching the resignation of your office of agent?—I had.

Mr. *Erskine*.—This is totally irrelevant.

Mr. Justice *Heath*.—The question we have to try here, is the degree of force and violence.

Witness.—It was my intention to resign it on the 22d of February.

Mr. *Manley*.—If we are to go by the strict rule, I take it to be the clearest principle of law that can possibly be stated in a court of justice, that I have a right, as counsel for a prosecutor, if I insist upon it, to state every fact that is relevant to the cause, though perhaps, for the sake of the convenience of the Court, it has been usual to state matter of aggravation only by affidavit: but if I insist upon it, I take it to be a clear, settled principle of law, that I have a right to state it; but I do admit that it has been the usual practice, and of late years, within the reign of the last chief justice of England, it has been usual to state that by affidavit; but I believe the principle was never denied, that the party had a right, if he chose so to do, to have every fact in evidence before the Court that is relevant to the cause; but I do not insist upon it here. I merely mean now to ask one or two simple questions touching the resignation of this office, which appear to me material to this cause.

Mr. *Erskine*.—I have no right, undoubtedly to call upon the prosecutor's counsel to state the course of their projected examination—my office is confined to taking an objection to any question, that I humbly think is illegal. I agree with Mr. Manley, and do not wish to bind him down by the practice of this or that chief justice; I ask no other limitation to him than the law of the land prescribes at all times. I admit, that it is open to Mr. *Manley*, without asking your lordship's leave.—That your lordship's jurisdiction does not extend to estopping him from asking questions to any fact that is relevant to the cause. Then, what is the cause?—The cause is not, whether this man had legal possession of the office, or whether he by force had possession

of the office—whether the bishop of Bangor came into this office upon a legal or an illegal project.—The question is not, *quo animo* the bishop came into this office, but whether he came, attended with those circumstances, and did those acts charged upon this record, and which constitute a riot? That is the matter I came to defend. I do not know, except hearing from my learned friend, nor ever troubled myself to enquire, whether this man had any other collateral character than of agent to the bishop.

Mr. Manley.—I abandoned the agency long ago,

Mr. Erskine.—Is there any question before the Court?

Mr. Manley.—The question which I was about to ask the witness was, whether he ever made any offer to resign the office of deputy registrar.—Did you ever make an offer to the bishop, to resign the office of deputy registrar?—I said I would resign on the 22d of February last.—When was it you told the bishop that you should then resign?

Mr. Erskine.—Was it not in writing that you made that offer to the bishop?—I am not clear whether it was in writing, or verbally.—I resigned my agency in writing, but I am not positive as to the other,

Mr. Erskine.—I am positive, for I have got the letter.

Mr. Manley.—You did, in point of fact, tell him you meant to resign on the 22nd of February?—Undoubtedly.

Where were you on the 4th of January last?—At lord Newburgh's.

While you were there, did any thing happen?—I was sent for by lord Newburgh upon some private business. I desired my servant to bring my letters after me that came by that day's post.

In consequence of letters received there, did you return to Bangor?—No, I was not at Bangor till the 7th.

When you returned there on the 7th, had any thing happened at the office?—Yes; the office had been broke into.

Do you happen to know, from conversation with the bishop afterwards, who had broke the office?—Yes, and from others.

Who were the persons who broke it?

Mr. Erskine.—Only tell us what you heard from the bishop?

Mr. Manley.—Do you know from the bishop by whose orders the office had been broken open?—The bishop told me, in the presence of my clerk, that it was broke open by his orders. He said, it was done by his servants, by his directions; and one of his servants concerned in the breaking of it told me.

Did you observe, from the outward appearance, how it had been broke into?—There was a window; the leads had been taken out, and the glass had been taken down, and it appeared to me, that the persons had got through the iron bars; and fresh locks were

put upon the doors. Did you communicate to the bishop that fresh locks had been put upon the doors?—I asked my lord if he knew any thing of it; he said it was done by his directions.

What steps did you take in consequence of that?—I was exceedingly surprised—I did not know what to do for some time. At last I went to Bangor Ferry—I staid there the night---it was late—I had papers of great value—I had stamps to the value of two or three hundred pounds left in the office; and I knew I was answerable for all the archives, wills, and other papers, that were there; and I thought I ought to be restored to the possession of it as soon as possible. On the following morning, accompanied by my servants, we set off about nine from Bangor Ferry—we arrived at the office about ten—I had two clerks with me, and three servants.

When you arrived at the office, were there any other persons there?—No other persons that I took notice of—none by my desire.

Describe what you did?—I gave directions to force the doors open.

Was the door forced open?—The outer door was forced open.

Did you enter into the office after you had forced the door open?—I walked out at the door after I had forced that, and ordered my people to walk in and open the inner door—I walked out while they were doing it.

Did they open the inner door?—Yes.

Did the bishop, or any of the other defendants, make their appearance there?—When I walked out of the office, I saw Mr. Thomas Jones, one of the defendants—he came out of the dean's garden, to the best of my recollection, and he walked into the office; into what we call the hall.—I did not expect any thing of the kind—he placed his back against the inner door, and endeavoured to prevent our entry.—I asked Mr. Jones, what he meant by that—he at last said he meant to prevent our entrance—I said, go about your business, Mr. Jones, you have no business here—he said he had, it was his office—upon which I told my people.—I endeavoured, first of all, to take him and put him out of the door; but he struggled and wrestled with me a long time.—I did take him to the outer door, but could not do more—he put his hands against the door-way, and I could not get him any farther—he was in sight of the bishop's palace, and the servants, and called out to them to come to his assistance.

Use the expression he used. He called out, here! come here! or something to that effect.—When he called out, John Rasbrook, the bishop's house-steward, came out, and said, follow me!—and they all run towards the office; but Rasbrook was much before the servants.

Who were they that ran?—The bishop's tivery-servants, and others.

How many might there be?—Four, five, six, or seven of them, I cannot be particular; I was confused when I saw them all run so--- when I saw them run, I said to William Roberts, one of my servants, put Mr. Jones out, take him out—the man put his arms round him; and I perceived that Rasbrook and the bishops servants were running up—I stood upon the steps; Rasbrook came very near me running; I had in my pocket an empty pistol; I took this out, and told him if he advanced another step, that I would shoot him. It was an empty pistol?—Yes.

You are positive of that?—I am.

Relate what followed?—Rasbrook turned round, and ran away, and the bishop's servants stopped all of a sudden.

What did you do upon that?—By this time Mr. Jones was removed out of the office by my servant—We all went into the office, and shut the outer door, and fastened it, as well as we could, because it had been forced open, and it was not to be locked; we went into the inner office, and there we were very peaceable, and meant to have been so.

How long did you continue there before you were interrupted?—About a quarter of an hour.

What happened afterwards to interrupt your tranquillity?—I was at the upper end of the office; one of my servants called, and said, there was a loud knocking at the door, and somebody wished to come in—I went there, and heard a noise at the door.

Did you know whose voice it was?—I did not.

Was it a loud voice?—Yes, it was—I did not know the voice; upon this I said, if there was any body that meant to enter into my office by force, that they would do it at their peril.

Did you say that loud enough to be heard on the outside of the door?—Yes—There were several persons there; I loaded one pistol with powder and shot, not with ball, and repeated that I was armed with pistols, and that if any body came into the office by force, they should do it at their peril, and take the consequence, for that I would defend my office, as I thought I had a right to do, and that I would shoot the first person that entered. I heard a voice from without, "Will you shoot the bishop?"—then I knew it was the bishop; I knew the bishop was there—"Open the door to the bishop," the same voice said—I said, "Yes, my lord, immediately, provided your lordship enters peaceably."

Did you speak that out aloud, so that the bishop might have heard it?—Yes, I am sure he must have heard it—by this time I had loaded my pistol: I put it into my pocket: I walked to the chair I generally sit on at my desk when I transact business; I sat down, and desired the door might be opened; the bishop came into the office to me in a very great rage.

Did any other persons come in with him?

---There were some others that came, but I cannot particularly tell who—the bishop came in such a rage, that I took more particular notice of his lordship than any body else; he came in and said, "Fine work!" he said, "You shall not stay here, I will turn you out immediately!"—I said, "My lord, I shall certainly behave with due respect to your lordship, but I will not leave the office."—the bishop was in a great passion; he took hold of me; then he went from me to my husbandman, William Roberts; he was in the office: then he went and laid hold of another of my servants, David Roberts, and attempted to pull him out of the office. The bishop then returned again to William Roberts, and took him by the collar, and pushed him towards the door; he walked and run about, and was in a violent passion; he had a handkerchief in his hand, wiping his face, and came up to me with his hands so [describing it, clinching his hands, and holding them up before his breast] and said, he would turn me out.

Was it in the common way in which the bishop holds his hands, or was he in a great passion at the time?—He was in a passion—It is not usual, I suppose, for a bishop to hold clinched hands—and he called to his servants, and said, come and take them out—there was one of them, Griffiths, the helper in the stable; he said in Welsh to the other persons, shall we venture them, shall we lay hold of them?

When the bishop ordered his servants to come in, and turn you out, did you give any orders to your own servants?—I told them not to go out, that it was my office.

When the bishop first came into the room, did you give any orders to your servants?—I told them to retire to a spot near the window, and to be peaceable, and to be cool: "I have a right to defend this office; it is my office; be cool; molest no one."

And did they retire to that spot, and keep cool and peaceable?—They did—I begged of the bishop to be peaceable, and leave me in possession of my office, and not disturb me in it; I told him it was my castle, and I had a right, by law, to defend myself in it; or to that effect.

When the bishop called his servants to come in, and take you out, what followed?—He said, send to a magistrate; send to Mr. Kyffin—At one time the bishop called to his servants; one of them stepped forward and called out, let us lay hold of them! shall we venture them? let us turn them out! let us drive them out!

Was that after he had received the orders from the bishop?—It was the bishop called frequently to them.—I told the men the danger of it; that I was determined to defend myself; that it was my office; it was a place of great consequence to me; that I had many things of value there; that I would defend it by the means God and the law had put into my power—I used those words—Mr.

Roberts, the archdeacon, the other defendant, he came there, and he was also in a great rage.

How soon did he come after the bishop had given those orders?—I cannot take upon me to say whether it was immediately before or immediately afterwards; he was in a very great rage, and made use of very abusive language to me, and said, if nobody else would turn me out, he would—with his fist clinched—and the bishop said I had pistols with me: Pistols! said he—if you have pistols, shoot me, do not shoot the bishop; here, I present myself to you.

Where was he standing at that time?—Very near me in the office; he repeated it over and over in the most outrageous manner; he desired me to shoot him, but not the bishop—I said, he would appear very violent in the bishop's presence; he said, come out with me, come on, said he, if you dare; and he said, he would retire with me, pointing through the window to the church-yard; he was not afraid of me in any place. I replied to him, that I had then something else to attend to.

When you told him you had something else to attend to, did any thing farther pass?—He continued there a long time—sometimes very outrageous; at other times very abusive; at other times he said nothing. The defendant Hugh Owen came also there.

When did he come up?—I cannot be positive.

He is a clergyman?—Yes.

Where did he come to?—He came into the office also; he was talking very loud, and making a noise there; he was very insulting—I told them repeatedly, that I was very sorry for their conduct; that if any of them had any business, I was there ready to transact it; otherwise, I begged they would go about their business.

What did Mr. Owen do?—He was very insulting, and making a noise.—There was a Mr. John Williams also, another defendant, who behaved in a very riotous manner.

Is he a clergyman also?—Yes.

Relate what he did?—He was less noisy than the rest of them—I asked him what business he had there?—he did not make me any reply—I told him to go about his business, that he had no business to stay there; but he staid there long after the rest went, against my will—I told him to go about his business repeatedly; he told me he came there at the request of the bishop, and would not go—I farther told him it was a great shame for the bishop, and the rest of them, to come there in that riotous manner.

Mr. *Erskine*.—This was after the bishop was gone?—Yes.

Mr. *Manley*.—Was Thomas Jones there?—He was there.

How did he conduct himself?—He joined with them; he was very noisy, and insulting and abusive to me.

Did you desire him to leave the office?—I desired them all; but I spoke to Williams in particular to leave the office, because he remained there after the rest were gone.

How did the matter end afterwards?—Mr. Kyffin came there afterwards.

The magistrate?—Yes; and I saw the appearance of a constable.—The bishop immediately said to him, Mr. Kyffin, do your duty.

Where was the bishop all that time?—All the time in the office; they were there about an hour.

When did the bishop say that?—The bishop said that, I think, as soon as he saw him; upon this, Mr. Kyffin advanced to the place where I was, and said, in God's name; Mr. Grindley, what is the cause of all this?—I replied, that I really could not tell what was the cause of it; that the bishop and his chaplain, followed by several others, had come into the office in the manner he saw them, in that riotous manner. I said, if they had any business to transact, I was ready to do it; but if they had not, I thought it would be right for him to do his duty, and turn them all out. Mr. Kyffin did not do any thing at all; he was a very peaceable man, and I wish all the rest had been the same. Then Mrs. Warren came, attended by two other ladies; she begged of the bishop to go away; he said, he certainly would not; she said, do pray; and laid hold of the sleeve of his coat with one or both of her hands; and he resisted her, and said he would not go. There were two other ladies, of the name of Marriott; they were in tears; they begged, for God's sake, he would go; and they and others prevailed upon him, and at last got him to go.

What length of time were they, upon the whole, in the office?—As near as I can recollect, about an hour.

Mr. *Samuel Grindley* cross-examined by Mr. *Erskine*.

You have not told us when it was that the bishop of Bangor first desired you to relinquish your office.—How long was it before this transaction?—I told him that I should relinquish it—

I am not asking you what you told the bishop, but what requisition the bishop made of you?—He had made none of me.

He did not desire you to give up your office?—No.

At no time, neither by letter, nor by word of mouth?—He wrote me a letter.

You have had notice to produce that letter?—Not that letter.

You have had notice to produce all letters?—I beg your pardon; the bishop wrote to me to desire I would send him the key of the office, if that was a requisition.

The key had been formerly kept by one of your clerks, who resided at Bangor?—Yes, in my absence.

Where was it kept when you were present?—Sometimes by me, sometimes by a resident clerk.

What is his name?—Thomas Dodd; he kept the key generally, and the other clerks I used to send to his assistance occasionally kept it.

Of course, when the bishop had occasion to go into your office he might send for that key?—When he had occasion, I suppose he did go; I never saw him go there out of office hours.

Do you recollect desiring your clerk not to deliver the key if the bishop sent for it?—No.

How came your counsel to state that in your absence?—I desired that my clerk would be upon his guard, for the bishop had taken away the seals out of the office, which surprised me very much. I desired my clerk would be careful, lest he should get into possession of the office; and, to take care of the key.

Then you desired your clerk to be upon his guard, and if the bishop should want the key, not to deliver it to him?—The bishop had, in a clandestine way, sent to my resident clerk, and got the seals.

Did you, aye or no (I am not inquiring your motives), desire your clerk to be upon his guard, to be careful, that neither the bishop, nor any other person, should get into possession of the office?—I was so surprised when I heard the bishop had sent for the seals, that I thought it necessary to caution my clerk, as I had things of great value in the office.

I am not asking your motive; by possession do not you mean that the bishop should not have from the clerk the key, to get personal access into your office in your absence?—I told him to be cautious, lest the bishop should get possession of the office; but I never refused him admittance.

Was your clerk, by your permission or direction, to let the bishop have the key in your absence, if he wanted it?—I gave no other directions but those.

Upon your oath, did you not direct your clerk to take care that the bishop did not gain entrance into the office, in your absence?—Lest he should get possession of the office.

You desired your clerk to be upon his guard that the bishop might not have the key to enter into the office, lest he should take possession of it?—Lest he should get possession of it.

Then you desired him not to let the bishop have the key, lest he should get possession of it?—I told him to be upon his guard, that no one ousted him of the possession. I will relate the very directions, word for word.

Mind, I ask you upon your oath, whether you did direct your clerk to refuse the key to the bishop, if he wanted to go into the office in your absence?—I did not.

Then you were willing to let the bishop into the office, in your absence?—He is here [meaning the clerk], let him answer for himself. I said this to the clerk, that I was informed the bishop had got possession of the

great seal; that he had applied for both; I desired him to be careful of the office, lest the bishop should endeavour to get possession of that also.

Do you mean by that, that he was to be careful, and that if the bishop wanted to go into the office, he should accompany him, to see that he did not take the other seal, or that he should not have admission into the office in your absence?—I did not give him any such directions: all I directed him was this, to be careful lest the bishop should get possession of the office also.

Did you give him any directions concerning the key?—I think it was in writing that I sent the directions.

Will you swear you never directed him any thing concerning the key?—I think I did not mention it: but the key must be included: I gave general directions.

Thank you, Mr. Grindley, that is what I wanted. The bishop had taken off the lock from this door, and had another key made for it, and the bishop told you that this was done by his directions?—Undoubtedly.

Did he not tell you at the same time that the key was there, if you wanted it to take any papers out of the office?—He did not.

Nor wrote you to that effect?—No.

Nor communicated it in any way?—I cannot speak to that, but another person will. A message was sent to my clerk from the bishop, in the evening after the riot, by Mr. Roberts.

That is not an answer to my question. Previous to the time of your coming into the office by force, as I mean to contend you did, had you any declaration from the bishop, that the key was at the cathedral, or the palace, and that you might have it?—Positively not.

You had no reason to think that you could get possession in any other way, than the way you had recourse to?—He told me that I should not.

Then you sent for your three servants; are they your domestic servants?—They are my domestic servants.

What are their names?—Two hired servants, and the other is my blacksmith.

You call your blacksmith your domestic servant?—I said I had two hired domestics, and the other was my blacksmith.

Who were the others?—Two clerks.

You desired them to bring pistols with them, and powder and shot, did not you?—Yes.

I have an account of it here, I knew a good deal of this some time ago; you shall hear of that by-and-by; you desired them to get pistols, and powder and shot, and come to you?—Yes.

That you might get possession of the office?—I never meant to make use of pistols to get into possession; I meant to defend myself if I got into possession, and if any body should attempt to oust me, to defend myself in the possession.

Then you did bring pistols, and directed powder and shot should be brought, and they were accordingly brought to you?—They were not.

Where did you first receive the pistols?—At Bangor Ferry.

From whom did you receive them?—From Mr. Jackson; and then I put them into my pocket unloaded.

When Mr. Jones saw that you had entered into the office, you desired the blacksmith, no doubt, to break the lock?—I desired them generally.

After you had got access, Mr. Jones put his back against the inner door of the office?—Yes.

For the purpose of preventing your opening that also?—So it appeared.

Upon which you directed these persons that were with you to pull him out; you endeavoured first to put him out yourself?—I did, when I saw the bishop's servants running up to the office.

Upon your oath, was it not before; for you said the bishop's servants ran up in consequence of Rasbrook calling out?—Yes.

Was it not before Rasbrook called out?—He called out for assistance, when I was in the act of so doing.

Did he call out for any other assistance till you endeavoured to pull him out; and did not the bishop's servants come in consequence of his calling out for assistance?—Yes; I endeavoured to get him out, he struggled and wrestled with me; if the other door had been fairly open, I think I could have put him out.

But he called out loud?—Yes.

And in consequence of that, Rasbrook was the first man that came up?—Yes, he came up very near the steps: I told him, if he advanced, he must take the consequences.

Do you mean to swear, that is what you said to him? upon your oath, did you not present the pistol to him, and tell him, in plain English, you would shoot him?—Did I not say that, in my original examination: I had the pistol in my pocket?

Did you tell him it was empty?—No.

Did you tell him you would shoot him?—Yes.

Did you tell him you would shoot him with an empty pistol?—No.

When Rasbrook came up, you presented your pistol to him and told him you would shoot him?—Yes; he was running up very near to the office.

Then Mr. Rasbrook ran away?—Yes.

Probably he would not have been so ready to run away, if he had thought your pistol was not loaded?—Probably so.

The bishop after that came to the door?—He did.

You told the counsel, upon your original examination, that when the bishop was at the door, you called loud enough for every body to hear you, that you were determined to stand

upon your defence in your office—that you then loaded your pistols—that after you made fast the door, you called out that you were determined to defend your possession, and they must come in at their peril, if they attempted to come in by force.—Were not your words, “that you were armed, and were determined to maintain your possession, and would shoot the first man who entered by force?”—The words are these: When I heard this loud knocking at the door, I loaded one pistol with powder and shots, not a ball; and I mentioned to the persons at the door (I did not know who they were), that if any body forced themselves in, or attempted to force themselves in, that they would do it at their peril. I repeated again, that the pistol was loaded, that I was armed with pistols and other weapons; that if they forced themselves in, they would do it at their peril, that I would shoot the first man that entered, that I would defend myself in the possession of my office; or to that effect.

You said you were armed with pistols?—I said so, but I had only one; my clerk had the other pistol.

He was in the office with you?—Yes.

And that you said loud enough, that every body on the outside must hear?—Yes: and then somebody outside said, will you shoot the bishop? I said, No, my lord.

You heard a voice, desiring to be admitted, which, you then knew was the bishop, and you opened the door?—Yes.

How many persons came in with the bishop when he entered?—I cannot tell.

Did any body come in with him?—I cannot say.

Will you swear he desired any body to come in with him?—He called to several people to remove me.

When he asked admission, did he bring any thing in with him, or make use of any expression, calling upon others to follow him?—I will not be positive that he desired any body to follow him in.

Did the bishop say to you, when he came in, that he was much surprised that you should proceed with that force, violence, and tumult, to come into your office, when, if you wished to have the key, it was lying at the palace?—No such thing.

And he never reprehended you for using any violence?—He said, “Fine work!”

Where was your pistol at this time?—In my pocket.

The stock of your pistol was out of your pocket was it not?—No; I think the muzzle of it was; I dare say it was; I am sure it must.

What other arms had you?—None; I only said that to intimidate them from breaking in upon me.

Had you any bludgeons?—I had none.

Will you swear that none of the people who came in with you had bludgeons?—

I will swear nothing but what I am positive of.

What are you positive of?—I think they had no bludgeon.

Nor any other weapon?—They had a chisel and a hammer they broke the door open with.

The bishop was armed with his handkerchief, we find?—I do not know of any thing else.

Did you see any arms in the hands of any body who came afterwards into the office?—I did not.

Do you know that the bishop had sent for Mr. Kyffin a magistrate, before he came in?—No, I never knew any thing of the kind.

When did he send for him?—I heard somebody say, Is Kyffin sent for? or to that effect; and he soon came there.

How long had the bishop been there before Mr. Kyffin came in?—It was sometime, I think, before he was sent for.

When the bishop put his fist, in the manner you state, had he his handkerchief in his hand?—No, he held his fists in this manner (describing it, as in his original examination) and said, he would turn me out; he was running stamping about.

In a great passion, as you describe; how long was this after the bishop came in?—Some little time; I cannot be positive as to the time he was there.

Did you hear the bishop say to any body round him, that law must take its course with you, and desired them not, to interfere?—I did not.

When Mrs. Warren and the ladies came, they all went away, I understand?—Yes; and the bishop much against his will.

You loaded your pistol for the purpose of defending your possession?—I did.

And you were determined to defend your possession with them, and declared that publicly while this thing was going on?—I made no secret of it. I mentioned it once, twice, or three times; I conceived that I had a right to do it.

You say, that this Mr. Gunning, the minor, is the registrar—had you any appointment from Mr. Gunning?—I had an appointment from the bishop; and a confirmation, I conceived, from the son.

Had you a written confirmation from the son?—I had not.

Had you no appointment by the son?—I had a confirmation, it was with his approbation; I paid him his rent.

His approbation was signified by your paying his rent?—From what he spoke to me.

Perhaps it may be an impertinent curiosity; but I should wish to ask you whether you ever saw this book (showing the witness a pamphlet)?—I have seen some of these pamphlets.

You have read it, probably?—I believe I have.

You doubt it, perhaps?—Not in the least.

Did you ever see it in manuscript?—No.

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Nor any part of it?

Witness.—Any part of it?

Mr. Erskine.—Yes, any part of it?—No, I did not.

Mr. Adam.—I am at a loss to know what this is.

Mr. Justice Heath.—His seeing it in manuscript, if it were a libel, would not implicate him.

Mr. Erskine.—I may try the witness's credit with the Jury; I am going to contradict him. You never saw any part of it in manuscript?—No; I had two myself, one delivered to me in London, another sent down into the country.

You did not know that such a work was writing till it was sent to you—have a care; go gently?—You need not caution me; I have only to tell you this, that it was mentioned in the public paper, that a pamphlet against the bishop was shortly intended for the press last year.

Then it was only through the medium of the public news-paper that you knew that a pamphlet was in agitation against the bishop of Bangor?—That was the way I first came to know it.

As you have read the pamphlet, you will see there is a private correspondence between the bishop and you, stated in that pamphlet.—There is.

How did it happen that this correspondence got into the hands of any body who, without your knowledge, composed this pamphlet?—It was not without my knowledge.—Some circumstances attending my resignation of the office under the bishop, his lordship's conduct towards me, and several other circumstances, made it necessary for me to make it known how it was; and I gave an account to several of my friends.

Is that any part of it, "General Grindley's expedition into the office?"—Not in that manner; I told the plain truth as to general, or adjutant, I know nothing of that kind.

You only furnished these letters?—I delivered an account to several friends, of the bishop's conduct towards me.

But you had no idea that they would find their way into the shape of a pamphlet, to be circulated through Wales?—Not in the least.

You had no idea of that, till the book was sent you?—Not at all. When I saw it here, I knew it must be by somebody that had seen the account which I had written. For the bishop had proposed that I might act, with respect to some matters in Wales. In consequence of that, I did act: and afterwards he would not suffer me, nor allow me, which compelled me to take the steps I did; and in justification of my conduct, I did make this known.

You gave copies of your letters.—I did.

And there they are?—I do not know that they are here exact. I never compared them.

Did you see any of these pamphlets in Wales?—I have heard of a great many of them.

Did you see them in circulation in Wales, before this bill of indictment was preferred?—No; yes, I believe.

You seem now to be in doubt; are you in any doubt about that?—I am not positive whether they were before or after; I really cannot tell, upon my oath.

But about that time you saw them in circulation?—About that time.

In pretty large circulation, I believe?—I do not know; the one that was sent to me in the country—there were several others in the same parcel—I immediately ordered that pamphlet to be locked up.

Was that before the indictment was preferred?—I rather think after, but I cannot be positive about that.

Nor who wrote this pamphlet, you do not know of course?—I do not know.

Who might you give the copies of your letters to?—To several.

Who were they?—I think to a Mr. Williams, of Trefos.

Who else?—I showed them, and gave them to many of my friends.

Did you give copies to any body else?—I do not recollect that I did.

Mr. Samuel Grindley re-examined by Mr. Manley.

Had you any message from the bishop, before the riot was committed, that the key was at the palace for you?—Positively none.

I think you said, in your original examination, that after you had turned Mr. Jones out of the office, you had been, for about a quarter of an hour before the bishop came, in quiet possession of it?—Yes.

Then the bishop came and said, "Turn them out?"—Yes, after he came in.

My friend has asked you about this appointment: You paid the bishop, for the use of the minor, the rent, from time to time, of seventy pounds a year?—Yes.

Now about these letters: Did you deliver these letters, and communicate what had passed between you and the bishop, to your friend, with a view of vindicating yourself?—Yes, that was my motive: The curiosity of many was so much excited, that I was enquired of how it was, and I thought it necessary to do so.

And you did it with that view, and nothing else?—Yes.

Mr. Erakina.—Did you see this gentleman (Dr. Owen) in the room before the bishop left the room?—I have sworn it, and I repeat it.

By the room you mean the office?—Yes.

John Sharpe sworn.—Examined by Mr. Ellis.

On the seventh of January were you in the registrar's office, with Mr. Grindley?—Yes.

Do you recollect the bishop admitting to Mr. Grindley, that he had given directions for breaking into the registrar's office?—Yes.

Did you attend Mr. Grindley and some of his servants to the registrar's office upon the morning of the eighth?—I did not.

Did the bishop tell Mr. Grindley that he might have the key of the office if he chose to send for it?—On the contrary, he refused, and said he should not have admission into the office.

John Sharpe cross-examined by Mr. Plumer.

I believe you are the clerk that was left at Bangor when Mr. Grindley went away.—No.

Who was the clerk that was left?—Prichard.

Had you the possession of the key?—I had.

You had the key of this office in the absence of Mr. Grindley?—It was delivered to me by the clerk in the office on the 7th of January.

How long had it been in your possession?—In the evening of the 6th of January I got possession of the key from Mr. Dodd, and kept possession of it all the 7th.

You had not it before the evening of the 6th?—I kept possession of the key on the 7th, which was a holiday.

Before that time it was in the possession of Mr. Dodd?—Yes.

After it was delivered over to you were not your directions, not to let the bishop have the key?—Undoubtedly; the object of my having the key was to prevent Mr. Dodd, who we thought might be prevailed upon to deliver up the key, in consequence of what had passed with respect to the seals.

Thinking that Dodd would not be so much to be relied upon to keep the key from the bishop as you, it was for that purpose delivered to you?—I so understood.

I believe, after you had got possession of it, for the purpose you have described, to prevent the bishop having it, fearing he would make some improper use of it, after that time the bishop sent to you for the key, and you refused it?—It was for the purpose of preventing him; because Mr. Grindley had a number of private papers there, independent of the archives belonging to the registrar's office.

These private papers did not relate to the office, but were private papers of his own?—I do not know what they were, they were in a private desk of his own.

Was that desk locked?—Yes.

So he was afraid the bishop should break open that lock, and take away his private papers?—I cannot suppose that.

This private desk was locked; and the proceedings of the courts, and the wills, all the public documents of the court, were in that office?—They were under lock and key; but I believe the keys were left in the locks; they were all in places for public security.

After you had got the key, did not the bishop send to you, to desire to have the key, and you refused him?—The first person that applied to me was Mr. Dodd, who, I believe, had been down along with the bishop: he applied to me for the key.

For the bishop?—Yes, for the bishop.

Did he say it was for the bishop?—I believe it was.

At what time of the day was that?—At noon, on the 6th: it was a day prior to the breaking into the office.

Did you at any time send the key to the bishop?—I did not: my directions were to the contrary.

Whether what you did was not in pursuance of the directions you had received from Mr. Grindley?—Undoubtedly so.

John Sharpe re-examined by *Mr. Ellis*.

Did Mr. Grindley give you any other directions respecting this key, but "to take care?"

Mr. Erskine.—He refused to deliver the key to the bishop: he had the key on the 5th, he kept possession all the day on the 6th, and on the 7th gave it to Mr. Grindley.

Mr. Adam.—Was it on the 6th you were asked for it?

Witness.—It was.

Thomas Prichard sworn.—Examined by *Mr. Adam*.

What are you?—A clerk to Mr. Grindley. Were you a clerk to Mr. Grindley in January last?—I was.

Were you at Bangor upon the 6th, 7th and 8th of January last?—I was there upon the 8th.

In the morning of the 8th?—Yes.

You know the situation of the office of the registrar there?—Yes.

It has a lobby to it, has it not; there is a flight of steps up to the porch?—Yes.

There is a door to that porch?—Yes.

Were you there at the time the door was shut?—I was.

Whom did you go with?—With Mr. Grindley, and one of his clerks, and three of his servants.

You got the doors opened, and went into the office?—Yes.

When you got into the office, did Mr. Grindley give you any directions how you were to conduct yourselves?—Yes: the bishop's agent came there before we got the door open.

What is his name?—Mr. Jones.

You put him out?—Yes; Mr. Grindley did.

After he was gone, what did you do?—Forced open the inner door, the door of the office.

Then Mr. Grindley, and you, and those who were with him, went in?—Yes.

What was done to the outer door?—It was fastened by one of the men.

When you got into the office, what was done to the inner door?—It was left open.

How long had you been in the office before any body came?—About a quarter of an hour, I believe: I cannot tell certainly.

What passed when any body came?—There was a loud knocking at the door: I kept on the inside of the office.

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When this knocking came at the door, did you hear any voice?—Not at first.

Afterwards what did you hear?—I heard somebody say, "Open the door!" but they continued knocking a good while before that. Was there a bawling at the door?—Not at first.

Was there at any time?—Yes, some persons cried out, "Open the door!"

What did Mr. Grindley do upon that?—He walked towards the door.

Did he afterwards open the door?—He asked who was there first; nobody answered directly—he asked, I believe, a second time, who was at the door—he told them, if they burst the door open he would shoot them—or something of that kind. They continued knocking at the door, and somebody cried out, "Open the door!"—Mr. Grindley inquired who was there; at last somebody called out, "Will you open the door to the bishop of Bangor?" Mr. Grindley said, "I will open the door to your lordship,"—and the door was opened.

Before the door was opened, had Mr. Grindley given any direction to you, and the other persons within, how you should conduct yourselves?—He told us to keep in the office, and not to come out, and to sit there quiet.

When the bishop came in, what happened?—He seemed to be in a very violent passion; he followed Mr. Grindley into the office, and he clenched his fists in this manner [describing it, his hands hanging down by his sides]—and said to Mr. Grindley, "Fine work! fine work!"—Mr. Grindley said, "So it is my lord, breaking open my office in this manner."—"Your office (said the bishop) you have nothing to do with it; you have no business here, I insist upon your going out!"—Mr. Grindley said, he would not go out, that he had a right to be there, and he would maintain his right; that he would pay due respect to his lordship.—The bishop was walking backwards and forwards in a very great passion, as I thought. Mr. Grindley seated himself down by a desk.—Mr. Roberts the chaplain, Dr. Owen, Mr. Jones, and Mr. Williams, soon followed him.

They are the defendants?—Yes.

How did they behave themselves?—Very riotous.

What did they do?—The bishop told the chaplain, that Mr. Grindley threatened to shoot him. The chaplain began to swagger, and said, if he would shoot any body he might shoot him; he challenged Mr. Grindley to retire, which he refused at that time, he said he had something else to do, or something of that kind, but he was at his service another time. Mr. Grindley was walking backward and forward.

Do you remember a person of the name of Roberts, a servant of Mr. Grindley?—Yes.

Do you remember a person of the name of Robert Davis, a servant of Mr. Grindley?—Yes.

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Was any thing done to either of them?—One of them asked, Who are these fellows? who are these ruffians?

Who asked that?—The chaplain, or somebody else; he said, who are these ruffians? Mr. Grindley said, they were quiet enough.

Did they continue quietly all this time?—Yes.

Was any thing done to these men?—The bishop went up to William Roberts, and laid hold of him in this manner [taking hold of his shoulder] and pushed him towards the door—he laid hold of the bishop's hand, and disengaged himself, and went farther on into the office.

Was any thing done to Robert Davis?—I did not see any thing done to him.

Did you see any thing else done by any other of the defendants?—Mr. Kyffin, the magistrate, came in soon, and asked what was the matter? Mr. Grindley said he did not know; that the bishop came in, and his chaplain followed.

Was the bishop there at that time?—Yes; that he came with his chaplain and a great number of men, and that he did not know what was the matter.

How many people might be collected together at this time?—I cannot tell; there might be forty people outside.

What put an end to this?—Mrs. Warren came into the office to endeavour to take the bishop away; she laid hold of his hand.

Did he go with her immediately?—He did not; he pulled his hand from her, at that time she laid hold of him, and took him out, but he did not go out immediately; they had him out at last.

Thomas Prichard cross-examined by Mr. *Leycester*.

You have told us all that passed, have you? because you are sworn to tell the whole truth, and you have done so, I take for granted?—I cannot recollect every word that passed.

But you have told us the principal circumstances that passed?—I believe so.

You have told us all that Mr. Grindley did at the beginning: As I understood you, the first time Mr. Grindley talked of shooting, was when there was a rapping at the door; he asked who was there, and said, if any body attempted to come in by force he would shoot them; that was the first time he talked of making use of his pistols, was not it?—No, I believe not.

You had heard him before, had you?—Yes, when the bishop's steward came.

The first thing that happened was Mr. Jones, the bishop's agent, coming in, I believe?—Yes.

When Mr. Jones came, Mr. Grindley attempted to turn him out, did not he? and they had a violent struggle?—Yes; but there were no blows.

Mr. Grindley was endeavouring to thrust him out?—Yes.

But Mr. Grindley first of all laid hold of him to thrust him out of the office, that was the beginning?—Yes, I believe it was; he placed himself with his back to the inner door.

The rest were sitting perfectly quiet, and you were quiet all the time?—I did not touch him.

They were all perfectly quiet?—After that Mr. Jones came in again.

I am speaking of Mr. Grindley and his people; you were all perfectly quiet; had you any of you a pistol?—Yes, I had a pistol.

So, Mr. Grindley directs you to be perfectly quiet, and puts a pistol into your hand?—It was an empty pistol.

And there was no powder and shot there?—I had none.

There was no powder and shot there?—Indeed I had none.

There was none there?—Mr. Grindley loaded his pistol.

Was there no powder and shot there, except what Mr. Grindley used to load his pistol with?—I had none, nor had any of the others that I know of.

When the bishop came in, you say he walked backwards and forwards, with his hands clenched in this position [describing it, his hands hanging down by his sides]?—Yes.

Apparently in a passion, and saying—"Fine work?"—Yes.

Walking about with his hands down in this manner [describing it as before]?—I cannot say they were so all the time.

But when he came in, you say the bishop held his hands in that manner, with his hands clenched, and said, "Fine work?"—Yes.

When you said they behaved riotously, you have told us all that passed, and what you understood to be riotous, was the bishop's being in a passion?—Yes.

You say some one asked who these ruffians were? Who made use of that expression, you do not know?—I am not very sure.

Upon your oath, was doctor Owen in the office at the same time with the bishop?—Yes, I believe he was.

Will you swear it positively?—I believe he was.

Before you said positively, now will you swear positively, that he was there at the same time with the bishop?—To the best of my recollection he was.

Do you recollect enough to swear positively one way or the other?—I believe he was.

Will you swear positively that he was? do you, or not, recollect with sufficient certainty to swear it positively?—I believe he was there.

Then you will not swear positively?—He was there I believe at the same time that the bishop was.

You will say no more than you believe. It was a market-day, was not it, at Bangor?—No; the market day is on a Saturday, this was on a Friday.

Was it, or not, market day at Bangor?—I believe not.

Did you live at Bangor?—No; Saturday is the market-day there.

Will you swear that Saturday is the market-day at Bangor?—Yes; they keep a market there on Saturday.

Will you swear that Friday is not the market-day?—They might sell butchers meat, or something of that kind.

Are you coming here to swear to what you know, or what you do not know? what day is the market-day?—Saturday is a market-day there.

You understand what is meant by the market-day; do not you?—Yes.

Will you swear now, once more, that Friday is not the market-day, why every body knows what is meant by the market-day?—Yes, I know.

Then will you swear that Friday is not the market-day?—It is Saturday, to the best of my knowledge.

Do you know whether it is or not?—I am not very sure.

Are you so certain about the rest you have been swearing to, as you are about the market-day?—I ask you, upon your oath, whether it was not market-day—whether the several people that came up, did not come out of curiosity?—They did not all come from the market.

These forty people did not come with the bishop?—I do not know from where they came.

Thomas Prichard re-examined by *Mr. Adam*.

You do not reside in Bangor?—No.

You are an engrossing clerk to *Mr. Grindley*?—I am employed in his office.

Have you any particular reason to know any thing about the market-day, one way or another?—I really forget.

John Thomas sworn.—Examined by *Mr. Manley*.

What are you?—A writer of *Mr. Grindley's*.

Were you with *Mr. Grindley*, at Bangor, on the morning in which he took possession of this office?—Yes.

We are told it was about nine or ten in the morning?—Yes.

After you had broke open the door, what did you do to the outer door, after you got in possession of the office?—Fastened the outer door with an iron wedge.

After you had fastened yourselves in, how long did you continue in the office before you heard anybody at the door?—We continued there about a quarter of an hour.

Did you hear a noise at the door then?—Yes, I heard a rapping at the outer door.

Did *Mr. Grindley* say any thing upon that rapping, or do any thing?—*Mr. Grindley* asked who was there; some person there said, open the door; then *Mr. Grindley* charged his pistol with powder and shot.

Having so charged it, did he say any thing before he opened the door to the persons out-

side?—He said that he was armed, and any persons that forcibly entered in, he would shoot them.

Did he say that out aloud, so that persons might hear it without the door?—Yes, he was close to the door when he said it.

What day is market-day at Bangor?—Friday.

Perhaps you are a native of Bangor?—No.

Do you live near it?—No.

When *Mr. Grindley* said, if you forcibly open the door I will shoot any person that does it; was that said once or twice, or oftener?—He said, you will not shoot me; open the door for the bishop of Bangor; *Mr. Grindley* said, yes, my lord, I will open to your lordship; the door was opened.

When the door was opened, did any body come into the office?—The bishop entered it.

What state of mind did he appear to be in?—In a violent rage; he came in stamping his feet; he walked towards *Mr. Grindley*, and said, fine work, fine work!—*Mr. Grindley* repeated, yes, fine work, in breaking open my office; whoever did it shall repent it.

What did the bishop do farther?—The bishop said, "Your office! you have no right to be here, you must quit it immediately;" or words to that effect. *Mr. Grindley* said, he had a right to be there. The bishop continued to be in a rage there all the while.

How did he show that he was in a rage?—He was stamping his feet, and walking about; he went towards *Mr. Grindley* very often, as if he had a mind, as I thought, to collar him.

How did he hold his hands, when you say you thought he meant to collar him?—His hands were clinched, and he was walking about close to *Mr. Grindley*.

Do you recollect what he said besides?—No.

Do you know *Dr. Owen*?—Yes.

Did you see the bishop do any thing to any of the persons that were there?—Yes; to one *William Roberts*; he ordered his people to turn him out, and desired that he would make out; he fastened at his collar, and grappled at him, and wanted to push him towards the door; upon this *William Roberts* took hold of his hand, and disengaged himself, got clear from him.

Did you see him do any thing to any other person?—No.

Did you see him do any thing to *Robert Davis*?—No.

Did you see *Dr. Owen* there?—Yes.

What time did he come there?—I cannot tell.

Was he there before the bishop went away?—Yes.

How long before the bishop went away had he been there?—Sometime before the bishop went away.

Did you hear him say or do any thing?—No; he was in a great passion, talking or doing something or other; talking and laugh-

ing; and talking in very high words, like the rest of them.

And that was before the bishop went away?—Yes.

Do you recollect any of those high words?—I do not recollect.

Was the reverend Mr. Roberts there?—Yes.

How soon did he come?—He came soon after the bishop.

Did he come before Dr. Owen, or after him?—Before Dr. Owen.

When the reverend Mr. Roberts came, what did he say or do?—He came in very violent, with his fist clinched, and in an abusive and riotous manner; and said, he would turn us out. The bishop told Mr. Roberts that Mr. Grindley was armed with pistols. Then he held his coat open, and said, if you shoot any body, shoot me; then he challenged Mr. Grindley to retire.

What was he to retire for?—To retire, as I thought, to fight.

Where was he to retire to?—He wanted him to retire, pointing with his hand out of doors, and he pointed his head on one side, as if challenging him to come out.

What did Mr. Grindley say to that?—He declined coming then, but he should be ready at his service at another period.

Was the bishop present at this time?—He was present.

And heard what Roberts said?—He was in the office.

Mr. Roberts is his chaplain?—Yes.

Did you see the reverend Dr. Owen there?—Dr. Owen was not come in at that time.

Did you see John Williams there?—Yes.

The reverend Mr. Williams, how soon did he come?—He was there at the beginning.

Before or after Mr. Roberts?—After.

What did he do?—He was there among the rest, talking this and that, and wrangling there; there was a great noise amongst them.

Did you see Thomas Jones?—Yes.

Was he there?—Yes.

When did he come?—Soon after the bishop.

Did Thomas Jones come before Dr. Owen, or after?—I think he came before Dr. Owen.

Have you the least doubt whether Dr. Owen was there before the bishop went away?—He was there before the bishop went away.

How long might they stay there, in the whole?—An hour, or thereabouts.

Were there other persons about the door?—There were a great number of persons about the door.

Did any of the by-standers do any thing?—One of the by-standers, when the bishop said, turn the people out, turn them out—one of them at last advanced into the inner office, and said to the others in Welsh,—"Shall we take hold of them? come, come, let us take hold of them,"—Mr. Grindley moved from the door where he then was.

During this time, what had become of Mr.

Grindley's servants and persons.—Mr. Grindley ordered them to go to the window, but that they should not go out. Mr. Grindley, when he saw the man advancing—

What was that man's name?—I do not know; upon the man advancing in, Mr. Grindley said, peace is what I want; I shall not quit this office.—He said, peace was what he wanted, and this office was his castle.—Mr. Grindley laid his hand upon his pistol, upon which the man retreated.

The man that had said, "Shall we turn them out?"—Yes.

Did any persons come there to the bishop afterwards; did you see Mrs. Warren there?—Yes.

How was the bishop got out of the office?—Mrs. Warren came into the office with two ladies requesting him to come out.

Did he go out upon her requesting him?—He did not; he was not inclined to go out.

What temper was he in at that time?—He was in a violent rage all the time; he would not go out at first—he mentioned that Mr. Grindley had pistols, that he was armed—I believe she was a little alarmed; then she took hold of his hand, and then took him by his arm and wanted to take him out, but he struggled from her, and would not go; he wanted to talk more with Mr. Grindley; they were talking one amongst another, all of them.

He did go out soon afterwards, I believe?—He did.

Did the rest of the clergy go with him?—All of them went with him, but Mr. Williams.

Do you recollect whether Dr. Owen went out with him?—Dr. Owen, I think, went out before him.

Was Dr. Owen in the room after the bishop had gone out at all?—I cannot recollect that.

But whether he came before, or no, you cannot tell?—I do not recollect.—He came with a paper for a receipt from Mr. Grindley; he wanted a receipt from Mr. Grindley.

That was after the bishop was gone out?—It was when the bishop was there; he was not quite gone out.

How long did Mr. Williams stay there after the bishop was gone?—I cannot recollect; Mr. Grindley said he was ready to transact any business, if he had any; Mr. Williams said, the bishop desired of him to stay there.

John Thomas cross-examined by *Mr. Mills*.

You describe yourself as an engrossing clerk of Mr. Grindley's; is that your business?—As a writing clerk.

Have you any other particular interest about the business of Mr. Grindley?—No; I go here and there upon errands.

Perhaps those errands are about notes; do not you negotiate a little paper for Mr. Grindley?

Mr. Adam.—With what view do you put that question?

Mr. Milles.—to show that the witness is deeply interested with Grindley.

Mr. Justice Heath.—You are not to go into Grindley's private affairs.

Mr. Milles.—It does not signify. You came with these people from Bangor Ferry?—Yes.

How many were there of you?—There was a blacksmith, two servants, a clerk and myself.

Two pistols?—We had no pistols coming.

Where did you happen to find them?—They were borrowed somewhere.

How many men of you had bludgeons?—Small sticks.

Short sticks?—I had none.

I do not suppose they would put you upon that. Little short sticks, that when in the pocket, would just appear out of it?—No; they were too long for that.

They had none of them such sticks as those?—No; every one had a stick in his hand.

When you came into the office, what was your employment at first?—I was ordered to come there with Mr. Grindley.

Did you see all that passed; did you see Rasbrook come?—I did not see him come at all.

You did not see your master, Grindley, present the pistol to Rasbrook?—No, I was in the office then, and did not see that.

I understood you the bishop came into the office, and the others came after this?—Yes.

When the bishop came into the office, the muzzle of Grindley's pistol was out of his pocket, I believe?—The pistol was in his pocket.

Where was the other pistol?—The other pistol was unloaded, with one of his clerks.

Was it not upon the desk when the bishop came in?—No; it was in the clerk's pocket, and Mr. Grindley had the other.

Was not that pistol upon the desk while you were there?—I did not see it there.

You swear that?—I do.

You saw the desk?—I did: I was going backward and forward.

When the bishop came in, this conversation passed—"Fine work! fine work!"—he was then walking about in a passion?

He moved his hands so [describing it—his hands down by his sides.]—Yes.

Did you hear all that passed between the bishop and Grindley?—Yes.

Did you hear the bishop say this—"Those were the public records, and it was his duty to take care that the public records were not in improper hands?"—I cannot say for that.

Did not the bishop say, "The public records are here; they are of importance to the country, and it is unfit they should be in improper hands?"—I did not hear any thing of that; my eye was very often upon the people at the door, upon their talking so, and wrangling one with another, the bishop and every one of them.

So you remember his passion, you remem-

ber the attitude of his hands; but you cannot remember whether he said any thing of this sort in his conversation with Mr. Grindley?—I do not.

Do you remember Grindley putting a writ into the bishop's hand?—I do.

When was it that he put a writ in his hand?—He served him with a writ, and put it into the bishop's hand; the bishop read it, and said he would answer it.

Did he say that in a passion?—Yes, he was in a passion.

Then from the time he came in till he went away with Mrs. Warren, the bishop was in one continued passion, equally violent during the whole time he was in the room?—Yes.

Did you see Mr. Kyffin, a justice of the peace, come in?—Yes.

The bishop was in a passion then, was he?—He was in a passion for a long time, for some time.

Was he in a passion when Mr. Kyffin came in, aye or no? You do not remember that, perhaps?—No.

Did you see Mr. Kyffin come in a second time?—I saw him once only; I saw him talking with Mr. Grindley.

When you saw Mr. Kyffin with Mr. Grindley, did you see Dr. Owen with him?—I cannot recollect.

When Mr. Grindley said, "peace is what I want, and every man's house is his castle," he put his hand into his pocket and took out a pistol?—Yes.

Did not he persevere all the time in saying, he would defend his possession to the uttermost?—That he would not quit the office.

Robert Davis sworn.

[He not speaking English, an interpreter was sworn.]

Mr. Justice Heath.—What do you call this witness to prove?

Mr. Ellis.—Only to prove the same facts;

Mr. Adam.—I will rest the case here.

[The end of the evidence for the Prosecution.]

DEFENCE.

The honourable Thomas Erskine;

GENTLEMEN OF THE JURY:—My Learned Friend, in opening the case on the part of the Prosecution, has, from personal kindness to me, adverted to some successful exertions in the duties of my profession, and particularly in this place. It is true, that I have been in the practice of the law for very many years, and more than once, upon memorable occasions, in this court; yet, with all the experience which, in that long lapse of time, the most inattentive man may be supposed to have collected, I feel myself wholly at a loss in what manner to address you. I speak unaffectedly when I say, that I never felt myself in so complete a state of embarrassment in the course of my professional life;—indeed, I hardly know how to

collect my faculties at all, or in what fashion to deal with this most extraordinary subject. When my Learned Friend, Mr. Adam, spoke from himself, and from the emanations of as honourable a mind as ever was bestowed upon any of the human species, I know that he spoke the truth when he declared his wish to conduct the cause with all charity, and in the true spirit of Christianity.—But his duties were scarcely compatible with his intentions; and we shall, therefore, have, in the sequel, to examine how much of his speech was his own candid address, proceeding from himself; and what part of it may be considered as arrows from the quiver of his client.—The cause of the Bishop of Bangor can suffer nothing from this tribute, which is equally due to friendship and to justice:—on the contrary, I should have thought it material, at any rate, to advert to the advantage which Mr. Grindley might otherwise derive from being so represented.—I should have thought it right to guard you against blending the Client with the counsel.—It would have been my duty to warn you, not to confound the one with the other, lest, when you hear a liberal and ingenuous man, dealing, as he does, in humane and conciliating expressions, and observe him with an aspect of gentleness and moderation, you might be led by sympathy to imagine that such were the feelings, and that such had been the conduct of the man whom he represents.—On the contrary, I have no difficulty in asserting, and I shall only upon his Lordship to pronounce the law upon the subject, That you have before you a prosecution, set on foot without the smallest colour or foundation—a prosecution, hatched in mischief and in malice, by a man, who is, by his own confession, a disturber of the public peace; supported throughout by persons who, upon their own testimony, have been his accomplices, and who are now leagued with him in a conspiracy to turn the tables of justice upon those, who came to remonstrate against their violence, who honestly, but vainly, endeavoured to recall them to a sense of their duty, whose only object was, to preserve the public peace, and to secure even the sanctuaries of religion from the violation of discord and tumult.

What then is the cause of my embarrassment?—It is this.—In the extraordinary times in which we live; amidst the vast and portentous changes which have shaken, and are shaking the world; I cannot help imagin-

* No observation can be more just than this.—It is the most consummate art of an advocate, when he knows that an attack is likely to be made upon his Client, for turbulence and malice, to make the Jury think, by his whole speech and demeanor, that mildness and justice were his characteristics; and Mr. Adam appears, with great ability, to have fulfilled this duty. *Editor of Erskine's Speeches.*

ing, in standing up for a Defendant against such Prosecutors, that the religion and order, under which this country has existed for ages, had been subverted; that anarchy had set up her standard; that misrule had usurped the seat of justice, and that the workers of this confusion and uproar had obtained the power to question their superiors, and to subject them to ignominy and reproach, for venturing only to remonstrate against their violence, and for endeavouring to preserve tranquillity, by means not only hitherto accounted legal, but which the law has immemorably enacted as an INDISPENSABLE DUTY from all the subjects of this realm: Hence, if really is, that my embarrassment arises; and, however this may be considered as a strong figure in speaking, and introduced rather to captivate your imaginations, than gravely to solicit your judgments, yet let me ask you, Whether it is not the most natural train of ideas that can occur to any man, who has been eighteen years in the profession of the English law?

In the first place, Gentlemen, Who are the parties prosecuted and prosecuting?—What are the relations they stand in to each other?—What are the transactions, as they have been proved by themselves?—What is the law upon the subject?—and, What is the spirit and temper, the design and purpose of this nefarious prosecution?

The parties prosecuted are, the Right Reverend Prelate, whose name stands first upon the Indictment, and three ministers and members of his church, together with another, who is added (I know not why) as a Defendant.—The person prosecuting is—(how shall I describe him?)—For surely my Learned Friend could not be serious, when he stated the relation between this person and the Bishop of Bangor.—He told you, most truly, which renders it less necessary for me to take up your time upon the subject—that the Bishop is invested with a very large and important jurisdiction—that, by the ancient laws of this kingdom, it extends to many of the most material objects in civil life: that is, has the custody and recording of wills, the granting of administrations; and a jurisdiction over many other rights, of the deepest moment to the personal property of the King's subjects.—He told you, also, that all these complicated authorities, subject only to the appellate jurisdiction of the Metropolitan, are vested in the Bishop.—To which he might have added (and would, no doubt, if his cause would have admitted the addition), that two Bangor ministers, and not his temporary clerk, has, in the eye of the law, the custody of the records of his church; and that he also is the person whom the law looks to, for the due administration of every thing committed to his care;—his subordinate officers being, of course, responsible to him for the execution of what the law requires at his hands.

As the king himself, who is the fountain of all jurisdictions, cannot exercise them himself,

but only by substitutes; judicial and ministerial, to whom, in the various subordinations of magistracy, his executive authority is delegated; so in the descending scale of ecclesiastical authority, the Bishop also has his subordinates to assist him judicially, and who have again their subordinate officers and servants for the performance of those duties committed by law to the Bishop himself; but which he exercises through the various deputations which the law sanctions and confirms.

The Consistory Court, of which this man is the Deputy Registrar, is the Bishop's Court.—For the fulfilment of its duties, the law has allowed him his chancellor and superior judges, who have under them, in the different ecclesiastical divisions, their surrogates, who have again their various subordinates; the lowest, and last, and least of whom, is the Prosecutor of this Indictment; who nevertheless considers the cathedral church of Bangor, and the Court of the Bishop's see, as his own CASTLE: and who, under that idea, asserts the possession of it, even to the exclusion of the Bishop himself, by violence and armed resistance!—Do you wonder now, Gentlemen, that I found it difficult to handle this preposterous proceeding?—The Registrar himself (putting deputation out of the question) is the very lowest, last, and least of the creatures of the Bishop's jurisdiction; without a shadow of jurisdiction himself, either judicial or ministerial.—He sits, indeed, amongst the records, because he is to register the acts which are there recorded; but he sits there as an officer of the Bishop, and the office is held under the chapter part of the cathedral, and within its consecrated precincts, where the Bishop has a jurisdiction, independent of all those which my Friend has stated to you—a jurisdiction, given to him by many ancient statutes, not merely for preserving that tranquillity which civil order demands every where; but to enforce that reverence and solemnity, which religion enjoins, within its sanctuaries, throughout the whole Christian world.

Much has been said of the Registrar's freehold in his office:—but the term which he has in it—*vis. for life*—arose originally from an indulgence to the Bishop who conferred it; and it is an indulgence which still remains, notwithstanding the restraining statute of Elizabeth.—The Bishop's appointment of a Registrar is, therefore, binding upon his successor;—but how binding?—Is it binding to exclude the future Bishop from his own cathedral?—Is it true, as this man preposterously supposes, that, because he chooses to put private papers of his own, where no private papers ought to be—because he thinks fit to remove them from his own house, and put them into the office appointed only for the records of the public—because he mixes his own particular accounts with the archives of the diocese—that therefore, forsooth, he has a right to eust the Bishop from the offices

of his own Court, and with pistols, to resist his entrance, if he comes even to enjoin quiet and decency in his church?—Surely Bedlam is the proper forum to settle the rights of such a claimant.

The Bishop's authority, on the contrary, is so universal throughout his diocese, that it is laid down by Lord Coke, and followed by all the ecclesiastical writers down to the present time, that though the freehold in every church is in the parson, yet *that* freehold cannot oust the jurisdiction of the Ordinary, who has a right, not merely to be present to visit the conduct of the incumbent, but to see that the church is fit for the service of religion: and so absolute and paramount is his jurisdiction, that no man, except by prescription, can even set up or take down a monument, without his license; the consent of the parson, though the freehold is in him, being held not to be sufficient. The right, therefore, conferred by the Bishop on the Registrar, and binding (as I admit it to be) upon himself and his successor, is the right to perform the functions of the office, and to receive the legal emoluments.—The Registrar may also appoint his Deputy, but not in the manner my Learned Friend has affirmed; for the Registrar can appoint no Deputy without the Bishop's consent and approbation. My Learned Friend has been also totally misinstructed with regard to the late judgment of the Court of King's Bench on the subject.—He was not concerned in the motion; and has only his report of it from his Client.—Mr. Grindley was represented in that motion by a Learned Counsel, who now assists me in this Cause, to whom I desire to appeal.—The Court never pronounced a syllable which touched upon the controversy of to-day; on the contrary, its judgment was wholly destructive of Mr. Grindley's title to be Deputy—for it held, that the infant, and not his *natural* guardian, had, with the Bishop's approbation, the appointment of his Deputy; whereas Mr. Grindley was appointed by his *father only*, and not by the infant at all, which my friend well knew, and, therefore, gave parol evidence of his possession of the office, instead of producing his appointment, which would have been fatal to his title: and the reason why the Court refused the mandamus, was, because Mr. Roberts, who applied for it, was not a legal deputy. It did not decide, that the Prosecutor *was* the legal officer, but only that Mr. Roberts was *not*; and it decided that he *was not*, because he had only the appointment of the infant's father, which was, by the bye, the only title which the prosecutor had himself: and although the infant was a lunatic, and could no longer act in that respect for himself, yet the Court determined that his authority did not devolve to the father, but to the Court of Chancery, which has, by law, the custody of all lunatics.

This judgment was perfectly correct, and supports my proposition, That the Prosecutor

was a mere tenant at will of the Bishop.—The infant can, indeed, appoint his Deputy, but not *ex necessitate rei*, as my Friend supposes; on the contrary, he will find the reason given by the Court of King's Bench, as far back as the reign of Charles the First, as it is reported by that great magistrate, Mr. Justice Croke. It is there said, that an infant can appoint a deputy, *because the act requires no discretion, the approbation, which is tantamount to the choice, being in the Bishop.*—The continuance must, therefore, in common sense, be in the Bishop also; for otherwise, the infant having no discretion, a proper person might be removed indiscreetly, or an improper person might never be removed at all.—I maintain, therefore, on the authority of the ancient law, confirmed by the late decision of the Court of King's Bench, in *this very case*, that the Prosecutor, who is so forward to maintain a privilege, which he could not have maintained, even if he had been Judge of the Court, and Chancellor of the Diocese, had, in fact, no more title to the office than I have.—He tells you, himself, that he never had any appointment from the infant, but from the father only, with the infant's and the bishop's approbation; in other words, he was the deputy *de facto*: but, as such, I assert he was a mere tenant at will; and consequently became, to all intents and purposes, a private man, from the moment the Bishop signified his determination to put an end to his office; and that the Bishop had signified his determination before the transaction in question, Mr. Grindley has distinctly admitted also. I thought, indeed, I should be more likely to get that truth from him, by concealing from him the drift of my examination; and he, therefore, swore, most eagerly, that the bishop did not offer him the key at the palace; but that, on the contrary, he had told him distinctly, that he was no longer in the office. He says, besides, that the Bishop expressed the same determination by a letter; in answer to which he had declared his resolution to hold it till the year expired.—I say, therefore, that the prosecutor, at the time in question, was not Deputy Registrar, and that, the infant being a lunatic, the Bishop had a right to give charge of the office till another was duly appointed.—This point of law I will put on the record, if my Friend desires it.

But why should I exhaust myself with this collateral matter: since, in my view of the subject, it signifies nothing to the question we have to consider? It signifies not a farthing to the principles on which I presently mean to rest my defence, whether he was an usurper, or the legal deputy, or the infant himself with his patent in his hand.

Let us now, therefore, attend to what this man did, whatever character belonged to him.—This is principally to be collected from the Prosecutor's own testimony, which is open to several observations. My Learned Friend, who stated to you in his absence, the evidence

he expected from him, explained, with great distinctness, the nature and obligation of an oath; and, speaking from his own honest sensations, and anticipating the evidence of his Client, from the manner he would, as a witness, have delivered his own,—he told you, that you would hear from him, a plain, unvarnished statement—that he would keep back from you no circumstance, nor wish to give a colour to any part of the transaction.—What induced my Friend to assure us, with so much solicitude, that his witness would adhere so uniformly to the truth, I cannot imagine, unless he thought that his evidence stood in need of some recommendation.—All I can say is, that he did not in the least deserve the panegyric which was made upon him, for he did not give an *unvarnished* statement of the very beginning of the transaction, which produced all that followed.—I asked him, Whether, in refusing the key, he did not mean to keep an exclusive possession of the office, and to prevent the Bishop even from coming there?—But, observe how the gentleman fenced with this plain question—"I did not," he said, "*refuse him the key, but only lest he should take possession.*"—I asked him again, "If he did not positively refuse the key?"—and desired the answer to be taken down.—At that moment my friend, Mr. Manly, very seasonably interposed, as such a witness required to be dry-nursed; and at last he said, "*Oh, the key was included.*"

The Bishop, therefore, was actually and wilfully excluded wholly from the office. For, notwithstanding Mr. Grindley's hesitation, Mr. Sharpe, who followed him, and who had not heard his evidence, *from the witnesses being kept apart*, swore distinctly and at once, that the key was taken from Dodd, because Grindley thought he would let the bishop have it; and the witness said farther—"*I pledge myself to his words.*"—"IT WAS, THEREFORE, DELIVERED INTO MY CUSTODY, AND I REFUSED IT TO THE BISHOP—I DID SO BY MR. GRINDLEY'S DIRECTION, UNDOUBTEDLY."—

The very beginning of the transaction, then, is the total exclusion of the bishop from his own court, by a person appointed only to act as Deputy, by his own consent, and during his own will; which will he had absolutely determined before the time in question. I am, therefore, all amazement, when it shoots across my mind, that I am exhausting my strength in defending the Bishop; because, most undoubtedly, I should have been counsel for him as a Prosecutor, in bringing his opponents to justice.

—According to this new system, I would have THE JUDGES take care how they conduct themselves. The office-keepers of the records of the Courts at Westminster, are held by patent; even the Usher's place of the Court of King's Bench is for life; he too is allowed to appoint his deputy, who is the man that puts wafers into our boxes, and papers into our drawers, and who hands us our letters in the

cleft of a stick. But, nevertheless, I would have their lordships take care how they go into the Court of King's Bench, which, it seems, is this man's CASTLE.—If Mr. Hewit were to make a noise and disturb the Court, and Lord Kenyon were to order him to be pushed out, I suppose we should have his Lordship at the next assizes for a riot.—Suppose any of the Judges wished to inspect a record in the Treasury Chamber, and the clerk should not only refuse the key, but maintain his possession with pistols; would any man in his senses argue that it was either indictable or indecent to thrust him out into the street?—yet, where is the difference between the attendants on a court civil, and a court ecclesiastical? Where is the difference between the Keeper of the Records of the Court of King's Bench, or Common Pleas, and the Registrar of the Consistory of Bangor.

To all this I know it may be answered, That these observations (supposing them to be well founded) only establish the Bishop's right of entry into his office, and the illegal act of the Prosecutor in taking an exclusive possession; but that they do not vindicate the Bishop for having first taken off the lock in his absence, nor for afterwards disturbing him in the possession which he had peaceably regained; that the law was open to him, and that his personal interference was illegal.

To settle this point, we must first have recourse to facts, and then examine how the law applies to them.

It stands admitted, that though Mr. Grindley knew that the Bishop had determined his will, and had insisted on his surrender of his situation, which he never held but by the Bishop's sufferance, he absolutely refused the key, with the design to exclude him from the office.—It was not till then, that the Bishop, having no other means of access, ordered the lock to be taken off, and a new key to be made.—Now, whether this act of the Bishop's was legal or illegal, is wholly beside the question—his Lordship is not charged with any force or illegality on that account; he is not accused even in the counsel's speech, with any impropriety in this proceeding, except an intrusion into this imaginary castle of Mr. Grindley.—It is admitted, in short, that the Bishop, took a possession altogether peaceable.

His Lordship then, having removed the Deputy Registrar, without due authority, if you please, and being (if you will, for any thing which interests my argument) in possession, contrary to law, let us see what follows.—And in examining this part of the evidence, upon which, indeed, the whole case depends, I am not driven to the common address of a Counsel for a Defendant in a criminal prosecution; I am not obliged to entreat you to suspend your judgments till you hear the other side—I am not anxious to caution you to withhold implicit credit from the evidence, till the whole of it is before you.—No, Gentlemen—I am so far from being in that pain-

ful predicament, that though I know above half of what you have heard is not true; although I know that the transaction is distorted, perverted, and exaggerated in every limb and member; yet I desire that you will take it as it is, and find your verdict upon the foundation of its truth.—Neither do I desire to seduce your judgments, by reminding you of the delicacy of the case.—My Friend declares he does not know you personally, but that he supposes you must have a natural sympathy in protecting a person in the Bishop's situation against an imputation so extremely inconsistent with the character and dignity of his order.—It is natural, as decent men, that you should; and I, therefore, willingly second my Learned Friend in that part of his address.—I solemnly conjure you also to give an impartial judgment—I call upon you to convict or acquit, according to right and justice.—God forbid, that you should not!—I ask no favour for my Client because he is a prelate, but I claim for him the right of an English subject, to vindicate his conduct under the law of the land.

The Bishop, then, being in peaceable possession, what is the conduct of the Prosecutor, even upon his own confession?—He sends for three men; two of whom he calls domestics; one of them is his domestic blacksmith.—He comes with them, and others to the office, with pistols, and provided with powder and shot.—Now, *quo animo* did they come?—I was really so diverted with the nice distinction of Mr. Grindley, in his answer to this question, that I could scarcely preserve my gravity.—He said, "I came, it is true, with pistols, and with powder and shot, to take possession; but—mark—I did not load my pistols in order to take possession—I did not load them till after I had it, and then only to keep the possession I had peaceably taken."—This would be an admirable defence at the Old Bailey.—A man breaks into my house in the day, to rob me of my plate*—(this is but too apt a quotation, for so I lost the whole of it)—But this felon is a prudent man, and says to himself—I will not load my fire-arms till I have got into the house and taken the plate, and then I will load them, to defend myself against the owner, if I am discovered.—This is Mr. Grindley's law;—and, therefore, the moment he had forced the office, he loaded his pistols, and called aloud repeatedly, that he would blow out the brains of the first man that entered,—A pistol had before been held to the breast of one of the Bishop's servants; and things were in this posture when the Bishop came to the spot, and was admitted into the office.—The lock which he had affixed he found taken off, the doors forced open, and the apartment occupied by armed men, threatening violence to all who should oppose them.

* It seems Mr. Erskine's house in Serjeants' Inn had been recently broken open, and his plate all stolen.

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THIS IS MR. GRINDLEY'S OWN ACCOUNT.—He admits, that he had loaded his pistol *before the Bishop came*; that he had determined to stand, *vi et armis*, to maintain possession by violence, and by death if necessary; and that he had made that open declaration in the hearing of the Bishop of the diocese.—Perhaps Mr. Grindley may wish, hereafter, that he had not made this declaration so public; for, whatever may be the Bishop's forbearance, yet the criminal law may yet interpose by other instruments, and by other means.—Indeed, I am truly sorry to be discussing this matter for a *Defendant in July*, which ought to have been the accusation of a *Prosecutor six months ago*, if the public peace of the realm had been duly vindicated.

The Bishop, then, being at the door, and hearing his office was taken possession of by force, and by the very man whom he had displaced, the question is, Did he do *more* than the law warranted in that conjuncture?—I maintain, that, from over-forbearance, he did *much less*.—If in this scene of disorder the records of the diocese had been lost, mutilated, or even displaced, the Bishop, if not legally, would at the least have been morally responsible.---It was his duty, besides, to command decency within the precincts of his church, and to remove at a distance from it all disturbers of the peace.—And what, after all, did the Bishop do?—He walked up and down, remonstrating with the rioters, and desiring them to go out, having before sent for a magistrate to act according to his discretion.—It is true, Mr. Grindley worked himself up to say, that the Bishop held up his fist so [*describing it*]; but, with all his zeal, he will not venture to swear he did so with a *declaration*, or even with an *appearance*, of an intention to strike him. The whole that he can screw up his conscience to, is, to put the Bishop in an attitude, which is contradicted by every one of his own witnesses—who all say, that the Bishop seemed much surprised, and walked to and fro, saying, "This is fine work!"—and moving his hands backwards and forwards thus, [*describing it*]. Does this account at all correspond with Mr. Grindley's? or does it prove an attitude of force, or even an expression of passion? On the contrary, it appears to me the most natural conduct in the world. They may fancy, perhaps, that they expose the Bishop when they impute to him the common feelings, or, if you please, the indignation of a *MAN*, when all order is insulted in his presence, and a shameless outrage committed in the very sanctuary which he is called upon, by the duty of his office, and the dignity of his station, to protect.—But is it required of any man, either by human nature, or by human laws (whatever may be the sanctity of his character), to look at such a proceeding unmoved? Would it have been wrong, or indecent, if he had even *forcibly* removed them? I SAY, IT WAS HIS DUTY TO HAVE DONE SO, WHOEVER WERE THE OFFENDERS:

whether the Deputy Registrar, the Registrar himself, or the highest man in the kingdom.

To come at once to the point: I maintain, that, at the time the Bishop came to the door, at which very moment Grindley was threatening to shoot the first person that entered, which made somebody say, "Will you shoot the Bishop?"—I maintain, at that very moment three indictable offences were committing, which put every man upon the level of a magistrate, with regard to authority, and even prescribed a duty to every man to suppress them. In the first there was an *AFFRAY*; which my Friend did not define to you, but which I will.—Mr. Serjeant Hawkins, transcribing from the ancient authorities, and whose definition is confirmed by every day's practice, defines an affray thus: "It is an affray, though there is neither actual violence nor threat of violence, where a man arms himself with dangerous weapons in such a manner as will naturally cause terror;"—and this was always an offence at common law, and prohibited by many statutes.

Let us measure Mr. Grindley's conduct, upon his own account of it, by the standard of this law, and examine whether he was guilty of an affray. He certainly threatened violence; but I will throw him in that, as I shall examine his threatening when I present him to you in the character of a rioter.—I will suppose, then, that he threatened no violence; yet he was armed with dangerous weapons in such a manner as would naturally create terror.—He tells you, with an air of triumph, that he brought the arms for that express purpose, and that he dispersed those who came to disturb him in his CASTLE. He was, therefore clearly guilty of an affray.

Let us next see what the law is, as it regards all the King's subjects, when an affray is committed. The same authorities say,---(*I read from Mr. Serjeant Hawkins, who collects the result of them*), "That any private man may stop and resist all persons engaged in an affray, and remove them; that if he receive a hurt in thus preserving the peace, he may maintain an action for damages: and that, if he unavoidably hurt any of the parties of fending in doing that which the law both allows and commends, he may well justify it, for he is no ways in fault."---Setting aside, therefore, the office and authority of the bishop, and the place where it was committed, and considering him only as a private subject, with no power of magistracy, he had a right to do---not that which he did (*for in fact he did nothing*)---he had a right to remove them by main force, and to call others to assist in removing and securing them. The Bishop, however, did neither of these things; he took a more regular course---he sent for a magistrate to preserve the peace---he had, indeed, sent for him before he came himself; yet they would have you believe, that he went there for an illegal purpose---as if any man who intended violence, would

send for a magistrate to witness the commission of it. When the magistrate came, Mr. Grindley thought fit to behave a little more decently; and so far was the bishop from acting with passion or resentment, that when those about him were desirous of interfering, and offered their services to turn them out, he said to them, "No! let the law take its course in due season."---His Lordship, by this answer showed a greater regard for peace than recollection of the law; for the course of the law *did* warrant their forcible removal; instead of which, he left the Prosecutor, with arms in his hands, in a possession, taken originally by force, and forcibly maintained.

Let us next examine if the Prosecutor and his witnesses, were engaged in a riot.---My Learned Friend will forgive me if I remind him, that there is one part of the legal definition of a riot, which he omitted.---I will, therefore, supply the omission from the same authorities.---"A riot is, where three persons, "or more, assemble together with an intent, "mutually to assist one another against any "who shall oppose them in the execution of "some enterprise of a private nature, and "afterwards actually execute the same in a "turbulent manner, to the terror of the "people, whether the act intended be legal or "illegal." But the same authorities add very properly---"It is clearly agreed, that in every "riot there must be some such circumstances, "either of actual force and violence, or of an "apparent tending to strike terror into the "people, because a riot must always be laid "in *terrorem populi*"---This most important part of the definition of a riot, which my Friend prudently omitted, points, directly and conclusively, upon the conduct of *his own* Client, and completely excludes *mine*.---The Prosecutor, and his witnesses, *did* assemble mutually to support one another, and executed their purpose *with arms in their hands, and with threats and terror*; which conclusively constitutes a riot, whether he was Registrar, or not, and whatever might be his right of possession.---The Bishop, on the other hand, though he might have no right to remove the Prosecutor, nor any right to possession, could not possibly be a rioter, for he came *without violence or terror, or the means of either*, and, if he had employed them, might lawfully have used them against those who were employing both.

Let us now further examine, whether I was right in maintaining, that there was an aggravation, from the *place* where the offence was committed, and which invested the Bishop with a distinct character and authority.

By the statute of Edward the sixth, if persons come tumultuously within the consecrated precincts of the church, the Ordinary has not only a right to repress them, but he may excommunicate the offenders; who are, besides, liable to a severe and ignominious

temporal punishment, after a conviction on indictment, even for an indecent brawling within the precincts of the church, without any act at all, which would amount to a riot or an affray.

Let us then, for a moment, reflect, how these solemn authorities, and any possible offence in the Reverend Prelate, can possibly be reconciled; and let us contemplate, also, the condition of England, if it be established as a precedent upon the fact before you, that he is amenable to criminal jurisdiction upon this record.---A riot may arise in the street, the moment after your verdict is pronounced, by persons determined to take and to maintain some possession by force. I may see or hear armed men threatening death to all who shall oppose them; yet I should not venture to interpose to restore the peace, because I cannot try their titles, nor examine to which of the contending parties the matter in controversy may belong.---If this new doctrine is to be established, ask yourselves this question---Who will in future interfere to maintain that tranquillity, which the magistrates may come too late to preserve, if the rein is given to disorder in the beginning? Although dangerous violence may be committing, though public order may be trampled down within his view, a wise man will keep hereafter within the walls of his own house. Though fearless of danger to his *person*, he may yet justly fear for his *reputation*, since, if he only asks what is the matter, and interposes his authority or counsel, he may be put by the rioters, into an attitude of defiance, and may be subjected to the expense and degradation of a prosecution! The delicate situation of the Bishop, at this moment criminally accused before you, is admitted; but it is hardly more, Gentlemen, than would attach upon persons of many other descriptions.---The same situation would not be much less distressing to a Judge, to a Member of Parliament, or to any of you, Gentlemen, whom I am addressing.---What would be the condition of the Public, or your own, if you might be thus dragged to the Assizes as rioters, by the very rioters which your duty had driven you to offend? I assert that society could not exist for an hour, if its laws were thus calculated to encourage its destroyers, and to punish its protectors.

Gentlemen, there is no man loves freedom better than I do; there is no man, I hope who would more strenuously oppose himself to proud and insolent domination in men of authority, whether proceeding from ministers of the church, or magistrates of the state.---There is no man, who would feel less disposed to step beyond my absolutely imposed duty as an advocate, to support oppression, or to argue away the privileges of an Englishman.---I admit, that an Englishman's house is his castle; and I recollect and recognize all the liberties he ought to enjoy.---My Friend, and I, are not

likely to differ, as to what an Englishman's freedom consists in. The freedom that ~~HE~~ and I love and contend for, is ~~THE SAME~~. It is a freedom that grows out of, and stands firm upon, ~~THE LAW~~—it is a freedom which rests upon the ancient institutions of our wise forefathers—it is a freedom which is not only consistent with, but which cannot exist without, public order and peace—and, above all, it is a freedom cemented by morals, and still more exalted by a reverence for religion, which is the parent of that charity, humanity, and mild character, which has formed, for ages, the glory of this country.

Gentlemen, my Learned Friend takes notice, that this cause has been removed from its primitive tribunal, in order to be tried before you at Shrewsbury. He tells you, he never saw the affidavit that was the foundation of its removal; which, however, he with great propriety supposes contained matter which made it appear to Lord Kenyon to be his duty to withdraw the trial from its proper forum in Wales.—But, he is instructed by Mr. Grindley to deny that any thing was done, either by himself or any other person connected with him, to prejudice that tribunal, or the country which was to supply it.—I, on the other hand, assert, that upon the prosecutor's *own evidence*, greater injustice and malice never marked any judicial proceeding. I have in my hand a book (no matter by whom written) circulated industriously through all Wales, to prejudice the public mind upon the very question before you. But Mr. Grindley, it seems, is not responsible for the acts of this anonymous libeller—How far he is responsible, it is for you to judge. It is for you to settle, how it happened that the author of this book should have it in his power, minutely to narrate every circumstance which Mr. Grindley has himself been swearing to; and that he should happen, besides, to paint them in the *very same* colours, and to swell them with the *same* exaggerations, with which they have been this morning accompanied.—It will be for you to calculate the *chances* that should bring into the same book under inverted commas, a long correspondence between the Bishop of Bangor and this very person.—Gentlemen, he admits, upon his oath, “that he “furnished the materials from whence that “part of the work, at least, might have “reached the author;” and from thence it will be for you to guess, what share he had in the remainder.—All I know is, that from that time forward the Bishop's character has been torn to pieces, not from this pamphlet alone, but by a pestilential blast of libels, following one another; so that it has been impossible to read a newspaper, without having announced to us this miserable cause, and the inquiries forsooth to be instituted in parliament, which were to follow the decision.—Gentlemen, the same spirit pursues the cause even into *THIS PLACE*,—proceeding from the same tainted source.—My Friend tempers his

discourse with that decorum and respect for religion, which is inseparable from the lips of so good a man.—He tells you, that it has been wittily said of the clergy, and his Client desires him to add, “truly too”—that the clergy have found what Archimedes wished for in vain—“a fulcrum, from whence to “move the world,” he tells you, “that it is “recorded of that great philosopher, that he “desired but to have a fulcrum for his engine “to enable him to accomplish it.”—“Churchmen,” says Mr. Grindley, by the mouth of Mr. Adam, who cannot abandon him, and who, as a sort of set off against his *own* honour and moderation, is obliged to inhale the spirit of his Client, “The church,” says Mr. Grindley, “has found this fulcrum in the “other world, and it is by playing off *that* “world, they enthral the world we live in.” He admits, indeed, that when they employ their authority to enforce the true purposes of religion, they have a right to that awful fulcrum upon which their engine is placed, and then their office will inspire reverence and submission; but when they make use of it for the lowest and most violent purposes, for ends destructive alike to religion and civil society (*of course the purposes in question*), *THEN* it seems it is, that disgrace not only falls upon its individuals, but destruction overtakes the order.

My Learned Friend, by his Client's instruction, then immediately applies this general reflection, and says, “that he can discover no “other reason, why the bishop would no longer permit Mr. Grindley to hold the office, “than that he had deviated from his celestial “course—had looked to the vile and sordid “affairs of the world, and prostituted the sacred dignity of his character to purposes “which would degrade men in the lowest situations.”—My Friend said, across the Court, that he had never seen the pamphlet. Good God! I believe it.—But I have seen it; and I have no doubt that one half of it is copied into his brief: it is written in this very spirit—it brings before the bishop the events of France—it warns him of the fate of his brethren in that country, as an awful lesson to ecclesiastics of all ranks and denominations, and reminds, him, that 18 archbishops, 118 bishops, 11,850 canons, 3000 superiors of convents, and a revenue of fifteen millions sterling, were on a sudden swept away. [*Mr. Erskine here read an extract from the pamphlet and then continued:*]

Gentlemen, all this is mighty well; but he must be but little acquainted with the calamities of France, who believes that this was the source of them. It was from *no such causes* that those horrors and calamities arose, which have disfigured and dishonoured her revolution, and which have clouded and obscured the otherwise majestic course of freedom;—horrors and calamities which have inspired an alarm into many good men, and furnished a pretext for many wicked ones, in our own

country. It was the profligacy and corruption of the French state, and not the immorality of her clergy, which produced that sudden and extraordinary crisis, in the vortex of which the church, and almost religion itself, were swallowed up. The clergy of France was pulled down, in the very manner of this pamphlet.—A trumpet was blown against their order—the Massacre of St. Bartholomew was acted upon the stage, and the Cardinal of Lorraine introduced upon it, exciting to murder, in the robes of his sacred order.—It was asked, by a most eloquent writer* (with whom I do not agree in many things, as I do in this) whether this horrid spectacle was introduced to inspire the French people with a just horror of blood and persecution?—and he answers the question himself by saying, that it was to excite the indignation of the French nation against religion and its offices; and that it had its effect: “That by such” means the Archbishop of Paris, a man only “known to his flock by his prayers and benedictions, and the extent of whose vast revenues could be best ascertained by his unexampled charity to the unhappy, was to be hunted down like a wild beast, merely because the Cardinal of Lorraine, in the sixteenth century, had been a rebel and a murderer.”

In the same manner, this pamphlet, through the medium of abuse upon the Bishop of Bangor, is obviously calculated to abuse the minds of the lower orders of the people against the Church: and to destroy the best consolation of human life, by bringing the sanctions of religion into doubt and disrepute. I am, myself, no member of the church of England, nor do I know that my Friend is—we were both born in another part of the island, and educated in other forms of worship; but we respect the offices of religion in whatever hands they are placed by the laws of our country: and certainly the English clergy never stood higher than they do to day, when Mr. Adam, so thoroughly acquainted with the history of his country, as far as it is ancient, and who, from his personal and professional connexions, is so perfectly acquainted with all that passes in the world of our own day, is drawn back to the times of Laud and Wolsey, to search for English prelates, who have been a reproach to the order; and when he would represent tyranny and oppression in churchmen, is forced back upon an unreformed church, and to ages of darkness and superstition, because it would have been in vain to look for them under the shadow of that mild religion which has promoted such a spirit of humanity, and stamped such a character upon our country, that if it should ever please God to permit her to be agitated like neighbouring nations, the happy difference would be seen between men who reverence religion, and those who set out with des-

trouying it.—The Bishops, besides (to do them common justice), are certainly the last of the clergy that should be attacked.—The indulgent spirit of reformed Christianity, recollecting that, though invested with a divine office, they are men with human passions and affections, permits them to mix in all the customary indulgences, which, without corrupting our morals, constitute much of the comfort and happiness of our lives; yet, they in a manner separate themselves from their own families; and, whilst the other orders of the clergy, even the most dignified, enjoy (without being condemned for it) the amusements which taste and refinement spread before us, no bishop is found within these haunts of dissipation.—So far from subjecting themselves to be brought to the assizes for riot and disorder, they thus refuse many of the harmless gratifications, which, perhaps, rather give a grace and ornament to virtue, than disfigure the character of a Christian; and I am sure the Reverend Prelate, whom I represent has never overstepped those limits, which a decorum, perhaps overstrained, has by custom imposed upon the whole order. The Bishop's individual character, like every other man's must be gathered from his life, which, I have always understood, has been eminently useful and virtuous. I know he is connected with those, whose lives are both; and who must be suffering distress at this moment from these proceedings. He is nearly allied to one whose extraordinary knowledge enables him to fulfil the duties of a warm benevolence, in restoring health to the sick, and in bringing together with it hope and consolation to families in the bitterness of affliction and distress.—I have, more than once, received that blessing at his hands, which has added not a little to the anxiety which I now feel.

Gentlemen, I am instructed, and indeed pressed, by the anxiety of the Bishop's friends, to call many witnesses, to show that he was by no means disturbed with passion, as has been represented, and that, so far from it, he even repressed those, whose zeal for order, and whose affection for his person, prompted them to interfere; saying to them, “The law will interpose in due season.” I have witnesses, to a great number, whom I am pressed to call before you, who would contradict Mr. Grindley in the most material parts of his testimony; but then I feel the advantage he would derive from this unnecessary course; he would have an opportunity from it, to deprive the Reverend Prelate of the testimony and protection of your approbation. He would say, no doubt, “Oh, I made out the case which vindicated my Prosecution, though it was afterwards overturned by the testimony of persons in the bishop's suite, and implicitly devoted to his service;—I laid facts before the jury, from which a conviction must have followed, and I am

* Mr. Burke.

* The celebrated Dr. Richard Warren.

"not responsible for the false glosses by which his witnesses have perverted them."—This would be the language of the prosecutor; and I am, therefore, extremely anxious that your verdict should proceed upon the facts as they now stand before the Court, and that you should repel, with indignation, a charge which is defeated by the very evidence that has been given to support it.—I cannot, besides endure the humiliation of fighting with a shadow, and the imprudence of giving importance, to what I hold to be *nothing*, by putting any thing in the scale against it; a conduct which would amount to a confession that *something* had been proved which demanded an answer. How far those, from whom my instructions come, may think me warranted in pursuing this course, I do not know; but the decision of that question will not rest with either of us, if your good sense and consciences should, as I am persuaded they will, give an immediate and reasonable sanction to this conclusion of the trial.

[Mr. Erskine, after consulting a few minutes with Mr. Plumer, Mr. Leycester, and Mr. Milles, informed the Court he should give no evidence.]

SUMMING UP.

Mr. Justice Heath.—Gentlemen of the Jury;—This is an indictment against the Bishop of Bangor, Hugh Owen, John Roberts, John Williams, and Thomas Jones. The indictment states, "That Samuel Grindley" (who, it seems, is the prosecutor of this indictment), "on the 8th of January last, was deputy registrar of the episcopal and consistorial court of the bishop of Bangor, and that, in right of his office, he had the use of a room adjoining to the cathedral church of Bangor, called the registrar's office, for transacting the business of his office: that the defendants, intending to disturb the prosecutor in the execution of his office of deputy registrar, on the 8th of January last, riotously assembled and unlawfully broke the registrar's office, and remained there for an hour, and continued making a great disturbance, and assaulted the prosecutor and stirred up a riot."

This Gentlemen, is the substance of the indictment.—The definition of a riot has been truly stated to you; it may be collected indeed from the indictment itself; and is, when two or more persons assemble together with an intent mutually to assist each other, and to resist all those who should oppose them, and with a farther intent to break the peace—and it is likewise for a private purpose.

Now, before I sum up the evidence, I shall state those things particularly, to which you should direct your attention; and you will consider how the evidence applies in support of the indictment. It must be proved to your satisfaction, that the prosecutor is deputy registrar of this consistorial court of the bishop of Bangor; that, in right of that office, he had

the use of this room to transact his business there; that the defendants, intending to disturb him in his office, riotously assembled to disturb the peace, and broke and entered the office room, and continued there, making a great disturbance, asserting that he had assumed an office which did not belong to him, and making a riot there. These things must be proved to your satisfaction.—I will comment upon the evidence as I shall state it to you.

Samuel Grindley, the prosecutor, tells you, that in February 1793, he was appointed agent to the bishop of Bangor, and that he afterwards held the office of deputy registrar, under Mr. Gunning, who, it seems was a minor; that he saw Mr. Gunning the registrar, in October 1794; that he paid seventy pounds a year to the bishop, on account of Mr. Gunning his principal; that the bishop was the person who made the bargain between him and his principal; that he entered on his office as deputy.—He says, that he was invited by the bishop, and that the bishop introduced him (the prosecutor) to Mr. Gunning as the principal registrar, and introduced the principal registrar to the witness as his deputy.—He says, that there was no complaint that he had not discharged the duties of his office; and that he continued to discharge the duties of his office till the 22nd of February last. He says, that there is an apartment belonging to this office, which, it seems, is under the chapter-house adjoining to the cathedral; that there is a flight of steps going up to it—that he employs his clerks in the office, and he has a resident clerk there.—He says, he told the bishop that he would resign on the 22nd of February last; that on the 4th of January he was absent from Bangor, and returned on the 7th, having received information that his office had been broken open; that the bishop afterwards acknowledged to him, that it had been broken open by his (the bishop's) servants, under his direction.—He says, that some panes of glass had been taken down, the leads had been removed, and fresh locks had been put upon the doors. All this the bishop acknowledged.—And then he gives you an account of his coming there; of his breaking open the door, and his entering again.

Let us consider, so far as this, how it applies. In the first place it certainly does not lie in the mouth of the bishop to say, that this man was not properly appointed to his office; he was in the exercise of his office; he had made an agreement with his principal and he paid him seventy pounds a year—the bishop was the person who negotiated the business; and he gave the bishop notice that he meant to give up his office on the 22nd of February; but you see, between the 4th and the 7th of January, before the time the prosecutor had appointed for resigning his office the bishop thought proper to go to the office and break open the lock, and then, it is

contended, on the part of the Defendants, that the bishop was in peaceable possession; it is contended too, that, as bishop, he had a jurisdiction in this cathedral—that, because the deputy registrar must be confirmed by the bishop, the prosecutor is only tenant at will to the bishop; that he never had a legal appointment, and, therefore, the bishop had the power of dismissing him.

Now, in the first place, supposing it to be proved, that the bishop had a power of dismissing him (which does not appear one way or the other), it does not follow from thence, that he ought to do it by force or violence—he ought to do it by process of law. It happens in this country that the lords chief justices of the courts of King's-bench and Common pleas have a right of appointing officers; the judges attending the court at the Old Bailey, have a right of appointing the officers there—and questions have frequently arisen concerning this power of appointment, whether rightfully or wrongfully exercised. What is the mode of deciding it? Each party appoints his officer, and then one brings his action, and it is determined by due course of law.—If the bishop had a right of dispossessing this man, which does not appear to me, because, though the appointment of a deputy might not be good without the approbation of the bishop, it does not follow from thence that the bishop had a right to withdraw that approbation and that confirmation, after it was given. Whether he can, or cannot, is a question I am not prepared to decide, and it is immaterial to the present question; it is enough to say that if the bishop had that right and that power, it behoved him to have caused Mr. Gunning to have appointed another deputy, and then that deputy ought to have tried the right.—The question then is, was the bishop in peaceable possession? *No man is in peaceable possession of any place which he comes to by force and violence*; the bishop exercised force and violence in this respect, in breaking the lock, and in putting on a new lock; therefore, the force and violence was on the part of the bishop;—he was never in peaceable possession of this place, nor could he have a right to come and put this lock upon the door.

Let us pursue this matter by steps.—The prosecutor said, he came armed with pistols; that was, I think, improper; he ought not to have armed himself with pistols in that fashion.—He broke open the lock, and he entered; that was not improper; he being in possession of this office, it was lawful for him to do so.—Then it seems, a Mr. Rasbrook came, who is a person exercising some office under the bishop, his house-steward, I think; he came, and the prosecutor presented a pistol to him—that was highly improper. A man has a right to arm himself, and assemble his friends in defence of his house; but the law allows no more; because the house is his sanctuary, he is not to arm himself, and assemble his friends in defence of his close; but

ought to have recourse to legal means, if he is injured; and, therefore, the prosecutor certainly acted with a greater degree of force and violence, in that respect, than he ought to have done. But then that was no legal excuse for the bishop's coming afterwards in the manner he did. The prosecutor's presenting a pistol to Rasbrook, could be no inducement to the bishop, and the other defendants, because they were not present, and their passions were not provoked by it.

The bishop, in this case, gentlemen, seems to have laboured certainly under two very great errors.—First of all, that he had a right to remove the prosecutor; and secondly, that he had a right to remove him by *force and violence*.—Then these persons were removed out of the office; the outer door was secured, by some means, by the prosecutor, and the several persons with him.—It is said that *they* were guilty of a riot. I think certainly they were guilty of no riot *at this time*; they were guilty of a misdemeanor in arming themselves, but they stood merely upon the defensive.—No person, as I told you before, is justified in arming himself and his servants to defend his close; but if he does arm himself and his servants to defend his close, and opposes no person without the close, then he is guilty of no riot whatever.

The question is, whether or no they are guilty of such a breach of the peace—of an act of so much force and violence, as to constitute a riot.—When there was a knocking at the door, the prosecutor said he would shoot any one who should enter; which, I said before, he was not warranted in doing. Being told the bishop was there, he said he would treat him with all possible respect, and he opened the door, and admitted him and his followers; and then, he says, he loaded another pistol.—He tells you, the bishop entered in a great rage. Whether there was any rage or passion, or no, is only material to show whether or no the rest of the story is probable; because, his being in a rage, does not prove him guilty of a breach of the peace. The question is, whether he has committed any acts in breach of the peace?—First of all, the prosecutor tells you, that he told the bishop he should behave with proper respect to him, but he should not leave the office—he swears that the bishop took hold of him; and afterwards he went to William Roberts, an husbandman belonging to the witness—he then went to another servant, Robert Davis, and attempted to pull him out; that the bishop returned to William Roberts, collared him, and drew him towards the door; that the bishop went with his hands clenched towards the witness; and the witness describes the manner in which he (the bishop) went towards him.—Now, his taking hold of the witness is an **ASSAULT**.—He says, he attempted to pull him out; his seizing hold of him is an **ASSAULT**; his returning to William Roberts, and collaring him, and pushing him

towards the door, is ANOTHER ASSAULT: his going with his hands clenched towards him in a menacing way, if he were near enough to strike him, would be an assault; if not near enough to strike him, it would not be an assault: and then he called to his servants to come and pull him out—that is a breach of the peace, coming and removing them all by force and violence.

Then there is that which passes in respect to Mr. Roberts. The prosecutor and the other witnesses tell you, that Roberts was in a great rage; he cannot say whether he entered before or after the orders given by the bishop; that he clenched his fist, and said, "if nobody will turn him (meaning the prosecutor) out, I will do it."—The bishop said the prosecutor had pistols: upon which Roberts said, in an outrageous manner, "do not shoot the bishop, shoot me;" and said, that if nobody else would turn the prosecutor out, he would.—He asked the prosecutor to go on one side with him, into the church-yard, and said, he was not afraid of him in any place. The witness said, he had something else to attend to; and another of the witnesses said, he promised to meet him at some other time and place. This is, you see, a challenge by Roberts to fight the prosecutor; why, that is a breach of the peace. The bishop is present; he is the person who tells Roberts that the prosecutor had pistols; then the bishop hears this challenge. They all came upon one design. When several persons come upon an illegal design or purpose, the act of one, especially if in the presence of all, is the act of all.

This, gentlemen, is the sum of the evidence on the *one side*; and there is no evidence on the *other*.

The bishop, no doubt, is a man of an excellent character; but at this moment he gave way to his temper. He ought to have followed the process of the law, and not so to have done. Thus much I have said affects the bishop, and affects Roberts. As to Owen, the prosecutor says that Owen came into the office; he made a noise: he talked very loud. The witness told him if he had any business, he was there ready to transact it, otherwise he begged they would go about their business. He only speaks to his making a noise. John Williams, he says, was less noisy than the rest. The witness asked what business he had there; and told him to go about his business. He says he staid there against his will: he staid after the rest went away.

Upon this it is necessary for me to state, as I did before, that the other defendants coming with the bishop upon the same de-

sign, by force and violence, to dispossess the prosecutor, undoubtedly they came with an unlawful intent and purpose; and if you believe these witnesses, they were guilty of the several breaches of the peace which I have stated, in assaulting the prosecutor, in assaulting David Roberts, in assaulting William Roberts, and in the defendant Roberts challenging the prosecutor; if you believe these witnesses, it seems to me that the defendants are guilty of the riot with which they stand charged. As for the force and violence which the prosecutor made use of, all that may be urged in another place in mitigation of the punishment; it is only for you to determine whether they, or each of them, are guilty of this riot.

Mr. *Erskine*.—The two last witnesses stated a direct contradiction.

Mr. Justice *Heath*.—The law is clear and plain; you will apply the law to the facts as I have stated them. You will banish all prejudices that you may have from all publications. It is, indeed, unnecessary to admonish gentlemen of your enlightened understandings: but at the same time, considering that individuals are to be tried by the law of the land, if they are guilty, notwithstanding the high character they may deservedly have, down to this time, it is your duty to find them guilty. If you have any reasonable doubt whether they are guilty,—in that case you will acquit the defendants.

In about five minutes the Jury acquitted all the defendants.*

* The exemplary morals and decorum which have so long, to the honour of this country, distinguished the high dignitaries of her national church, bestowed upon the trial of the right reverend prelate, who was the principal object of it, an extraordinary degree of curiosity and interest. Indeed, from a perusal of the whole proceedings, we cannot help thinking, that the prosecutor might perhaps have been influenced by the expectation that any compromise would have been preferred by the defendant and his friends, to even a public discussion of such an extraordinary accusation as that of a riot and assault by an English bishop, assisted by other clergymen of his diocese, within the very precincts of his own cathedral. The reverend prelate, however, was not to be intimidated.—He pleaded not guilty to the indictment, and received the clear acquittal of a jury of his countrymen.—*Editor of Erskine's Speeches.*

619. Proceedings on the Trial of an Information exhibited Ex-Officio by his Majesty's Attorney General (in pursuance of an Address presented to his Majesty by the House of Commons) against JOHN REEVES, Esquire, for a Seditious Libel; tried at Guildhall, by a Special Jury, before the Right Hon. Lloyd Lord Kenyon, Lord Chief Justice of the Court of King's-Bench, May 20th: 36 GEORGE III.
A. D. 1796.*

[The parliamentary proceedings relating to this case are fully reported in the New Parliamentary History, Vol. 39, pp. 608 *et seq.*: It is therefore thought unnecessary here to repeat them.]

INFORMATION.

Of Hilary Term in the thirty-sixth year of King George the third.

London to wit. } BE it remembered that sir John Scott knight attorney general of our lord the now king who prosecutes in this behalf for our said lord the king comes into the court of our said lord the king before the king himself at Westminster on Saturday next after the octave of Saint Hilary in this same term and for our said lord the king giveth the court here to understand and be informed that JOHN REEVES late of Westminster in the county of Middlesex esquire being a malicious seditious and ill-disposed person and greatly disaffected to the government of this realm and unlawfully and maliciously devising and intending to raise and excite jealousies and divisions among the liege subjects of our said lord the king and to alienate the affections of the liege subjects of our said lord the king from the government by King Lords and Commons now duly and happily established by law in this realm and to destroy and subvert the true principles of the free constitution of the government of this realm and most artfully and maliciously to traduce vilify and bring into contempt the power and dignity of the two houses of parliament of this realm and with intent to cause it to be believed that the regal power and government of this realm might consistently with the freedoms of this realm as by law declared and established be carried on in all its functions by the king of this realm although the offices duties and functions of the lords spiritual and temporal and Commons of this realm in par-

liament assembled should be suppressed and abolished on the twenty-ninth day of October in the thirty sixth year of the reign of our said present sovereign lord George the third now king of Great Britain &c. at London to wit at the parish of Saint Mary le Bow in the ward of Cheap in London aforesaid unlawfully maliciously and seditiously did print and publish and cause to be printed and published a certain scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the king and the government of this realm and of and concerning the two houses of parliament of this realm according to the tenor and effect following that is to say *With the exception, therefore, of the advice and consent of the two Houses of Parliament (meaning the parliament of this kingdom), and the interposition of juries; the government (meaning the government of this kingdom), and the administration of it in all its parts, may be said to rest wholly and solely on the king (meaning the king of this realm), and those appointed by him; those two adjuncts of parliament (meaning the parliament of this realm) and juries are subsidiary and occasional; but the king's power (meaning the power of the king of this realm) is a substantive one, always visible and active. By his officers, and in his name, every thing is transacted that relates to the peace of the realm and the protection of the subject. The subject feels this, and acknowledges with thankfulness a superintending sovereignty, which alone is congenial with the sentiments and temper of Englishmen. In fine, the government of England is a monarchy; the monarch is the ancient stock from which have sprung those goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it. But these are still only branches, and derive their origin and their nutriment from their common parent; they may be lopped off, and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire. The kingly government may go on, in all its functions, without Lords or Commons: it has heretofore done so for years together, and in our*

* Now first published from a report taken in short-hand by Joseph Gurney, which has been obligingly communicated to me by Mr. Reeves.

times it does so during every recess of parliament; but without the king his parliament is no more. The king, therefore, alone it is who necessarily subsists without change or diminution, and from him alone we unceasingly derive the protection of law and government. In contempt of our said lord the king and of the parliament and laws of this realm To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity And the said attorney general of our said lord the king for our said lord the king further gives the court here to understand and be informed that the said JOHN REEVES so being such person as aforesaid and unlawfully and maliciously devising and intending to raise and excite jealousies and divisions among the liege subjects of our said lord the king and to alienate the affections of the liege subjects of our said lord the king from the government by King Lords and Commons now duly and happily established by law in this realm and to destroy and subvert the true principles of the free constitution of the government of this realm and most artfully and maliciously to traduce vilify and bring into contempt the power and dignity of the two houses of parliament of this realm and with intent to cause it to be believed that the regal power and government of this realm might consistently with the freedom of this realm as by law declared and established be carried on in all its functions by the king of this realm although the Lords spiritual and temporal and Commons of this realm should in future never be assembled in parliament on the same day and year aforesaid at London aforesaid to wit at the parish and ward aforesaid in London aforesaid unlawfully maliciously and seditiously did print and publish and cause to be printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the king and the government of this realm and of and concerning the two Houses of Parliament of this realm according to the tenor and effect following that is to say *With the exception, therefore, of the advice and consent of the two houses of parliament (meaning the parliament of this kingdom), and the interposition of juries; the government (meaning the government of this kingdom), and the administration of it in all its parts, may be said to rest wholly and solely on the king (meaning the king of this realm), and those appointed by him. Those two adjuncts of parliament (meaning the parliament of this realm) and juries are subsidiary and occasional; but the king's power (meaning the power of the king of this realm) is a substantive one, always visible and active. By his officers, and in his name, every thing is transacted that relates to the peace of the realm, and the protection of the subject. The subject feels this, and acknowledges with thankfulness a superintending sovereignty which is alone con-*

genial with the sentiments and temper of Englishmen. In fine, the government of England is a monarchy; the monarch is the ancient stock from which have sprung those goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree and afford shelter to those who seek protection under it. But these are still only branches, and derive their origin and their nutriment from their common parent; they may be lopped off, and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire. The kingly government may go on, in all its functions, without Lords or Commons; it has heretofore done so for years together, and in our times it does so during every recess of parliament; but without the king his parliament is no more. The king, therefore, alone it is who necessarily subsists without change or diminution, and from him alone we unceasingly derive the protection of law and government. In contempt of our said lord the king and of the parliament and laws of this realm to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity And the said attorney general of our said lord the king for our said lord the king further gives the court here to understand and be informed that the said JOHN REEVES so being such person as aforesaid and unlawfully and maliciously devising and intending to raise and excite jealousies and divisions among the liege subjects of our said lord the king and to alienate the affections of the liege subjects of our said lord the king from the government by King Lords and Commons now duly and happily established by law in this realm and to destroy and subvert the true principles of the free constitution of the government of this realm and most artfully and maliciously to traduce vilify and bring into contempt the power and dignity of the two houses of parliament of this realm and with intent to cause it to be believed that the holding of parliaments is not essential to the exercise according to the freedom of this realm of any of the functions of the king of this realm in the government thereof on the same day and year aforesaid at London aforesaid to wit at the parish and ward aforesaid in London aforesaid unlawfully maliciously and seditiously did print and publish and cause to be printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the king and the government of this realm and of and concerning the two Houses of Parliament of this realm according to the tenor and effect following that is to say *With the exception, therefore, of the advice and consent of the two Houses of Parliament (meaning the parliament of this kingdom), and the interposition of juries; the government (meaning the government of this kingdom), and the administration of it in all its parts, may be said to rest wholly*

and solely on the king (meaning the king of this realm), and those appointed by him. Those two adjuncts of parliament (meaning the parliament of this realm) and juries are subsidiary and occasional; but the king's power (meaning the power of the king of this realm) is a substantive one, always visible and active. By his officers, and in his name, every thing is transacted that relates to the peace of the realm and the protection of the subject. The subject feels this, and acknowledges with thankfulness a superintending sovereignty, which alone is congenial with the sentiments and temper of Englishmen. In fine, the government of England is a monarchy; the monarch is the ancient stock from which have sprung those goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it. But these are still only branches, and derive their origin and their nutriment from their common parent; they may be lopped off, and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire; the kingly government may go on, in all its functions, without Lords or Commons: it has heretofore done so for years together; and in our times it does so during every recess of parliament; but without the king his parliament is no more. The king, therefore, alone it is who necessarily subsists without change or diminution, and from him alone we unceasingly derive the protection of law and government. In contempt of our said lord the king and of the parliament and laws of this realm To the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity And the said attorney-general of our said lord the king for our said lord the king further gives the Court here to understand and be informed that the said JOHN REEVES so being such person as aforesaid and unlawfully and maliciously devising and intending to raise and excite jealousies and divisions among the liege subjects of our said lord the king and to alienate the affections of the liege subjects of our said lord the king from the government by King Lords and Commons now duly and happily established by law in this realm and to destroy and subvert the true principles of the free constitution of the government of this realm and most artfully and maliciously to traduce vilify and bring into contempt the power and dignity of the two Houses of Parliament of this realm on the same day and year aforesaid at London aforesaid to wit at the parish and ward aforesaid in London aforesaid unlawfully maliciously and seditiously did print and publish and cause to be printed and published a certain other scandalous malicious and seditious libel containing therein among other things divers scandalous malicious and seditious matters of and concerning the king and the government of this realm and of and concerning the two Houses of Parliament of this realm according to the tenor and effect following that

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The information was opened by Mr. Abbott [afterwards Lord Chief Justice of the court of King's Bench.]

Mr. Attorney General [Sir John Scott, afterwards Lord Chancellor Eldon]:—May it please your Lordship;—Gentlemen of the Jury; I have the honour this day to attend you in obedience to a command which I have received from his majesty, and which he has been pleased to give me in consequence of an address which the House of Commons of this country thought proper to present to him, that he would order his attorney general to

prosecute the present defendant for the publication of a pamphlet, which that House had resolved to be, "a malicious, scandalous, and seditious libel, containing matter tending to create jealousies and divisions amongst his majesty's loyal subjects, to alienate their affections from our present happy form of government as established in King, Lords, and Commons, and to subvert the true principles of our free constitution." The House of Commons resolved farther, *that this pamphlet was a high breach of the privileges of that House.* Having come to that determination it was undoubtedly within their province to proceed to take such steps by way of animadversion upon the author as the justice of the case might seem to require from them; the mode however which they adopted for the purpose of vindicating the constitution of the country against this pamphlet, thus voted by them to be a malicious scandalous and seditious libel, was, to submit the question whether it be a malicious scandalous and seditious libel, to the decision of a jury of the country; that if they found it so to be, that punishment might follow which may be due to the author of the book.

Gentlemen, I have no difficulty in stating to my lord and you, that in my place in the House of Commons I took no part in the debate or the division upon this subject; because that debate having a tendency to decide, either that I should or should not discharge the duty which it is incumbent upon me this day to discharge, it appeared to me at least that I should act with more propriety if I abstained from giving any opinion upon the work, than if I either promoted or prejudiced that prosecution which it might become my duty to institute. But, at the same time, I did state that which I shall likewise take the liberty of stating to you: I humbly submitted to the attention of the House,* *the principle* upon which I hope I have always conducted prosecutions in matters of libel—the *principle* upon which, as far as my own judgment can lead me, it is my determination in future always to conduct such prosecutions;—and *that principle* which, as I had applied it to all those cases in which I had heretofore been concerned I meant to apply to all those in which I may hereafter take a part is the principle upon which I mean to act this day. I stated to the House, gentlemen, that the question which I was always desirous to put to a jury was, **WHETHER THE DEFENDANT PUBLISHED THE BOOK WITH THE CRIMINAL INTENTION CHARGED IN THE INDICTMENT.** That I have always thought to be my duty, and I shall ever act upon it as my duty until I am corrected by the wisdom which ought to direct me in cases of this sort. I have always thought it my duty to call the attention of the jury to the *whole* of the publication; to state to them, that in my humble opinion, it was

their duty to consider the work from the beginning to the end of it, to take every part of it as a context to the part charged in the information; and then, if they were finally satisfied that the intent of the author was the intent charged in the information,—considering it with reference to the context and the matter of the whole book—if they were satisfied that such was the intent with which the author published his book to the world, it was their duty to find him GUILTY.

Gentlemen, I now proceed to state to you what this information is; I shall next state to you generally the substance of the work which this information charges to be criminal; I shall then take leave (with my lord's permission, and under his correction) to state to you what I take to be the law of this country with respect to the principles of the constitution of its government; and, in conclusion, I shall shortly examine, with reference to the principles so stated, whether this charge (again calling your attention to the matter of the work which I shall have so previously stated) upon a due and conscientious attention to the law of the country as it respects the constitution of its government, to the matter of this book, and to the intention with which it must have been ushered into the world, is or is not substantiated.

The information charges, in the words of the resolution of the House of Commons which I have stated to you, that the Defendant, *intending to raise and excite jealousies and divisions amongst the liege subjects of our lord the king, and to alienate the affections of the liege subjects of our lord the king, from the government by King, Lords, and Commons, now duly and happily established by law in this country, and to destroy and to subvert the true principles of the free constitution of the government of the realm, and to bring into contempt the power and dignity of the two Houses of Parliament of the realm, and with intent to cause it to be believed that the regal power and government of this realm, might, consistently with the freedom of this realm, as by law declared and established, be carried on in all its functions, by the king of this realm, although the offices, duties, and functions, of the Lords spiritual and temporal, and Commons of this realm, in parliament assembled, should be suppressed and abolished, upon such a day published the following libellous matter;—I shall beg your attention to the averments in the other counts of this information before I state the libellous matter.*

The second count in the information varies the charge in the first, by stating it thus:—*with intent to cause it to be believed, that the regal power and government of this realm, might, consistently with the freedom of this realm, as by law declared and established, be carried on in all its functions, by the king of this realm, although the Lords spiritual and temporal, and Commons of this realm, should, in future, never be assembled in parliament.*

* See the New Parl. Hist. vol. 32, p. 634.

The third count states it thus:—*with intent to cause it to be believed that the holding of parliaments is not essential to the exercise according to the freedom of this realm, of any of the functions of the king of this realm, in the government thereof.*

The last count, charges the intent generally to be—*to bring into contempt the power and dignity of the two Houses of Parliament of this realm;* and I believe it cannot be contended with me, that if you shall finally be of opinion, that this publication was brought into the world, with any of the intents, charged in any of those counts, it will be your duty to find the defendant guilty.

The work, a passage from which is stated in the information, the averments of which I have just been mentioning to you, is a book, intitled, “Thoughts on the English Government, addressed to the quiet good Sense of the People of England,” and this appears to have been the first of an intended Series of letters. You will allow me, gentlemen, to state to you by going through it,—which I shall be able to do without taking up any considerable portion of my lord’s time or yours—the general tendency of this book, by calling your attention to the several parts of it as I go through it, from the beginning to the end, stating shortly the substance of it; and, when I come to that passage which is charged in the information to be criminal, I shall take the liberty of stating it to my lord and you very particularly.

Gentlemen, the author, with great truth, says of the people of this country, that we possess a greater portion of good sense, through all ranks of society, from the highest to the lowest, than the people of any of the nations which surround us. He says, “I have not yet seen equal marks of good sense in those matters, where, of all others, they should be manifested, I mean in their laws and government:”—He is there speaking of modern philosophers and politicians;—he then says (and it is fit that I should mention it to you, on the principle which I have before stated as that which regards my own conduct)—he says, “I am not a *Citizen of the World*, so as to divide my affection with strangers—I am an Englishman; and I thank God for having placed me among a people, who, I think, possess more goodness of heart, and more good sense than any other in the world; and who are the happiest, because they make the best use of both.” He then states in the third page of the book—what he enforces in the last page—the influence of this general good sense in the country, over the parties in it, and over parliament:—he represents, in the fifth page, an Englishman, as having a natural love of liberty, that he has a jealousy of power without an ambition to partake of it. He states, in the seventh and eighth pages, the equality of the people of this country in their ranks, from the highest to the lowest, in the view of the law; and then, in the

ninth page, he begins to state that doctrine which it is my duty to submit to you, as being exceptionable to the extent to which it is charged to be so in this information; he says, “The English government is an organ of public union and activity, which is adapted to the humour and mode of thinking of those who were witnesses to the formation of it, and who live under it. It appears to me, we may discern in the whole disposition of it, the result of that constitution of mind”—that is, the good sense of which the author has been speaking—“which I have just ascribed to our countrymen. Unambitious, and preferring the quiet and peace, which enables them to pursue their own affairs, to the power and splendour of managing those of the public, the English yield a willing obedience to a government not of their own choosing.” You will see presently how far that is consistent with some other pages in this work. “It is an hereditary king, who bears all the burthen of government, who is endued with all the power necessary to carry it on, and who enjoys all the honour and pre-eminence necessary to give splendor to so high a station. It is the *king’s peace*, under which we enjoy the freedom of our persons and the security of our property; he *makes* and he *executes* the laws, which contain the rules by which that peace is kept; and for this purpose, all officers, civil and military, derive their authority from him. Still farther to strengthen this all-powerful sway, two qualities are added, that seem to bring this royal sovereignty, as far as mortal institutions can be, still nearer to the government of heaven. First this power is to have perpetual continuance, *the king never dies*. Secondly, such unbounded power shall be presumed to be exercised with as eminent goodness; and it is accordingly held, that *the king can do no wrong*; meaning, that his person is so sacred, that wrong shall never be imputed to him.”

He then proceeds, gentlemen, to state what, I think, a fair discharge of my duty calls upon me to represent to you to be (to say the least of it), most unguardedly stated; he proceeds, gentlemen, to state the checks which the constitution has placed round the application of these general maxims. “These are the original and main principles upon which the plain Englishman, full of honesty and confidence, thinks he may rest, for the protection of his person and property. But human institutions will swerve from their original design, and Englishmen will not always confide; jealousies and fears arise, and these must be appeased. The reasonable jealousy of an Englishman seems to be fully satisfied, when a qualification is annexed to the power in the king, first, of *making*, and secondly, of *executing* the laws; by which his subjects are admitted to participate in a share of those high trusts.

“Accordingly, the king can *enact* no laws without the *advice and consent*, not only of

the Lords spiritual and temporal, who are in some sort councillors of his own choosing, but also of the Commons in parliament assembled. And the jealousy with regard to property has been such, that in devising this measure the subject has suffered a guard to be put upon himself; for the Commons, who are to advise and consent, are not the people at large, nor are they chosen by the people at large, but they are the knights, citizens, and burgesses, who are respectively chosen in counties, cities, and boroughs, by persons of substance and sufficiency, who may safely be trusted with the exercise of a charge where property is in question.

"In this manner is the power of the king qualified in the making of laws. His power in executing the laws is qualified by joining grand and petty juries, in the administration of justice, with his judges. To these two controls on the power of the king, must be added a principle, which gives the nation another security for the due exercise of the kingly power; for, though the king can do no wrong, yet if wrong is done by the application of the king's power, as he never acts without advice, the person who advises such application is responsible to the law."

Gentlemen, you will here permit me to call your attention for a single moment to that declaration which is contained in what I must state to be the great charter of the ancient, undoubted, indisputable rights of the people of England—I mean THE BILL OF RIGHTS; and here I beg your particular attention to what I hold to be, if not the most important (I think I may state it to be the most important), but certainly as important a declaration contained in that bill as any other which is to be found in the code of the laws and statutes which secure the rights and liberties of the people of this kingdom—"AND THAT FOR REDRESS OF ALL GRIEVANCES, AND FOR THE AMENDING, STRENGTHENING, AND PRESERVING OF THE LAWS, PARLIAMENTS OUGHT TO BE HELD FREQUENTLY." It is on this declaration that I bottom the assertion that the king of this country is bound to convene parliaments frequently, and that the exercise of the prerogative of the king in this country is not a due exercise of that prerogative except it be subject (with reference to this article of responsibility as to the advisers of that exercise) to the control of the parliament frequently convened, according to that obligation which is here stated to be an obligation under which the king is placed, and the benefit of which is secured to the people of this country by this declaration.

This passage, gentlemen, will deserve your most serious attention as applied to what I am now about to state to you—"With the exception, therefore, of the advice and consent of the two Houses of parliament"—which advice and consent you will permit me to state do not include in them the exercise of their power of calling upon the advisers of the exe-

cutive government to answer for bad advice,—"With the exception, therefore, of the advice and consent of the two Houses of parliament, and the interposition of juries; the government, and the administration of it in all its parts, may be said to rest wholly and solely on the king, and those appointed by him. Those two adjuncts of parliament and juries are subsidiary and occasional; but the king's power is a substantive one, always visible and active. By his officers, and in his name, every thing is transacted that relates to the peace of the realm and the protection of the subject. The subject feels this, and acknowledges with thankfulness a superintending sovereignty, which alone is congenial with the sentiments and temper of Englishmen. In fine, the government of England is a monarchy; the monarch is the ancient stock from which have sprung those goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it. But these are still only branches, and derive their origin and their nutriment from their common parent; they may be"—what?—suspended?—no—"they may be lopped off, and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire. The kingly government may go on, in all its functions," the functions being before stated to be the making and the execution of the laws, "without Lords or Commons: it has heretofore done so for years together,"—The fact, gentlemen, is too true, and this Bill of Rights is that great charter which prevents its ever doing so again—"and in our times it does so during every recess of parliament;"—but how does it so during every recess of parliament? why, gentlemen, under the wholesome control which arises from the conviction, that according to law, that recess cannot last long, and that those who as advisers of the crown are carrying on the executive government, must by-and-by meet that parliament, one of whose duties it is, to revise the advice with which the executive government acts—"But without the king his parliament is no more. The king, therefore, alone it is who necessarily subsists, without change or diminution; and from him alone we unceasingly derive the protection of law and government.

"Such are the principles and constitution of the English government, delivered down to us from our ancestors; such they can be demonstrated to be from the incontestible evidence of history and records; and such it is wished they should continue by nine-tenths of the nation."

Gentlemen, I hope and trust, that as far as I understand the constitution and the government of my country, I am as much wedded to them as any man whom I have the honour to address or to see in this place:—On the one hand I will, to the last hour of my existence, resist the efforts of those principles of

anarchy, which have a direct tendency to overthrow the government of this country, as established in a duly attempered constitution of King, Lords and Commons, at that period which I, adopting the language of the greatest constitutional lawyers who have lived in this country, call the *REVOLUTION*;—On the other hand, gentlemen, not suspected, I believe, of the want of a due loyal and constitutional attachment to the sovereign of my country, I say here, distinctly, that if that *duly attempered* constitution of government should cease to exist, if what are here called the branches of the tree (the King) the Lords and Commons—should be lopped off and thrown into the fire, the tree may be a tree—the king may be a king—but the king will not be a *BRITISH KING*.

I proceed, gentlemen, to call your attention to some other passages in this work.—You will find that the author, I do him the justice to state it, says, in page 14, That the best title of this government is professed to be its conformity to the principles of reason; that it has little to fear from honest disputation, but that it has much to fear from those who assume the guise and affectation of great friends and favourers of what is called the *constitution*; that there are persons in this country (and it is true undoubtedly) who would rather take the chance to become one of five hundred republicans that govern by their ordinances, that is by their own will, than continue the subjects of a king who governs by law.

The author then proceeds to state the history of the Reformation in this country, and of that great event, which some great lawyers of England have ventured to call (though this author would quarrel with the term) a *REVOLUTION* in the country. He proceeds to remark upon that great event in our history which has been in ordinary language called the *REVOLUTION*; and although this part of the work has no obvious connexion with the resolution of the House of Commons which is copied into this information, still it has the most material connexion with it as part of the context of this work, considering the tendency which it must have to give your minds the true clue by which to construe those passages which are stated in the information. "It seems to me," he says, "that most of the errors and misconceptions relative to the nature of our government have taken their rise from those two great events—the *Reformation*, and what is called the *Revolution*. There has either been some dissatisfaction with the manner and extent of those two measures, or some misapprehension of their design, or a want of insight into the grounds and principles of the subject matter, namely, the government in church and state.

"Those memorable transactions were conducted in a way that was truly English;"—Now, gentlemen, you will attend to this passage; and it belongs to justice to be candid,

and, therefore, I state to you, that when you come to see some passages in a subsequent part of this work, you will be astonished that the author did not take the trouble to read the whole over together, in order to make it in some degree consistent—"the actors in them proceeded with their remedy as far as the disease reached, and no farther; and they never suffered themselves to lose sight of this main rule, that what they did was to preserve the ancient government, and not to destroy or alter it."—In this part of the passage I go along with the author of this work; for I assert that at the *Revolution* the liberties of this country were restored, they were not then originally created.

After stating what passed in this country during the period of the Reformation, he treats the *Revolution* thus: "The abdication of king James the 2nd, and the transactions that ensued upon the vacancy thereby made in the throne, compose a very important and curious passage in the history of our government and laws. It has been vulgarly called,"—I beg your attention to this passage—"It has been vulgarly called, the *Revolution*; upon what authority I know not; it was not so named by parliament, nor is it a term known to our laws. This term had certainly no better origin than the conversation and pamphlets of the time, where words are used, in a popular and historical sense, without any regard or thought of technical propriety. But, unfortunately, this invention, or misapplication of words, leads to a confusion of ideas; knowledge is thereby put into a retrograde course; instead of going from things to words, we are obliged to pass from words to things: let the term *Revolution* be once consecrated as the true denomination of that event, and the mind ascribes to that transaction every thing which it can conceive to belong to the term. Too many among us use the word in some such indeterminate general sense, and such persons are accordingly misled by notions that have no sort of connexion with the thing of which they are speaking: and yet it is remarkable, that those who embrace this phantom, do it with a zeal and prepossession which we do not see in those who regard the substance and reality. These men think they can never show sufficient warmth and emotion when they name the *Revolution*."—Now, gentlemen, this is an event in our history which, you know, under the ordinance of the government, is annually commemorated at this moment in all our churches.*—"These

* In the year 1789, a bill was passed by the House of Commons "to establish a perpetual anniversary thanksgiving to Almighty God, for having, by the glorious *Revolution*, delivered this nation from arbitrary power; and to commemorate annually, the confirmation of the people's rights." An ineffectual opposition was made to the introduction of this bill; see the debate thereupon in the *New*

men think they can never show sufficient warmth and emotion when they name the *Revolution*; they form clubs to swear by, and worship it; they make great feasts to celebrate it; they have no love for the constitution but for that which was formed at the *Revolution*, and they are good subjects and loyal, only upon *Revolution principles*.

"What can be the cause of this mighty zeal? whence does it originate? and to what does it tend?—This beloved *Revolution* happened more than a century ago; so that all the heat which naturally attends such a crisis, and which may be kept up while it was recent, must have long since cooled and died away. No one can say, that any of the causes which produced that event, have recurred in our time, so as to remind us of the remedies our ancestors applied on that occasion."—"Who, besides themselves, say or think any thing about them [that is, the proceedings at the time of the *Revolution*]? They are recorded in our statute-book, like other matters of equal importance, and are the objects of serious study and contemplation;"—and then the author says very truly (and this passage will on his behalf deserve your attention)—"precedents that are regarded with reverence and with gratitude towards those who made them, but which we hope never to have occasion to follow."—He then states in page forty-one, "that so much commemoration of that *Revolution*, repeatedly urged out of all season and measure, cannot sound agreeably in the ears of the sovereign."

In page forty-two, gentlemen, there are the following passages—"But though the term *Revolution* throws confusion on the nature of the event it is meant to denote, it must yet be confessed, that it is not wholly without analogy to the circumstances attending it. As this term is of a comprehensive and loose import, and of a capacity for the worst men to find their own meaning in it, so that event, which was brought about"—These passages, gentlemen, well deserve, both on the part of the constitution, and on the part of the defendant, great attention from you;"—"which was brought about by the energy, good sense, and firmness, of some of the best and greatest men in the nation, was of a nature (unlike most good things) to be helped on by the concurrence and approbation of some of the worst men that could be found. But there was this difference between the two descriptions of

Parliamentary History, Vol. 37, p. 1332.—After a short debate in the House of Lords, the bill was rejected; on a division, there appeared against the first reading 13, for it 6. See the New Parliamentary History, Vol. 28, p. 224.

The commemoration of the *Revolution*, adverted to by the Attorney-general, will be found in the Form of Prayer, appointed to be used on the fifth day of November,

agents; what was merit in the one class of men, was none in the other. Those who loved the ancient government, and knew the value of monarchy, had great prepossessions to sacrifice before they could take such a step, though for the preservation of both, and though they knew that on the preservation of both depended their laws and liberties. But the rest, who had no partiality for monarchy, or who were ignorant or careless of its value; the *Republican*, the *Presbyterian*, and the *Sectaries*, to whom may be added a long train of the abandoned and dissolute; nothing was more easy to them, than to join in any thing that looked like successful rebellion"—that is to join in the *Revolution*.—"Those who hated the very frame of the government could not but be pleased with the shock it now received: some hoped that the change might lead to other innovations; those who had been used to pull down and destroy, gladly saw a prospect of reviving their old trade; persons without a determinate object, were yet too much amused with novelty not to be on the side of the authors of it.

"Whatever were their motives for joining in the new settlement, the *Republicans*, *Presbyterians*, and *Sectaries*, did not fail soon afterwards to urge their merit, and it must be confessed not without some show of reason. It was a fortunate crisis to them;" This author, who in page 9, had stated a passage, upon which I before observed, namely, that we yield an obedience to a government, not of our own choosing, says here, "It was a fortunate crisis to them;" the *Republicans*, *Presbyterians*, and *Sectaries*; "they now saw a government which they had a hand in rearing: they thought they should no longer be regarded with jealousy, and suspicion; and they hoped now to make themselves a party in the state, instead of being considered as a party against it. Bending all their endeavours to this point, the first thing to be done was to get a good name. For this purpose, they took their stand among the *Whigs*: under the pretence of that way of thinking, they began to vent their political opinions; which, however, they now so tempered and turned, as to adapt them to the government established by law. As they sacrificed the rigour of their own notions, they did not fail to take a similar liberty with the principles of the government; and so they have gone on, from those times to our own, corrupting the genuine principles of the English laws and government, in order to suit them to their own theories and systems, till they have filled the whole with uncertainty; and the constitution, of which they are so incessantly debating, is made one of the most doubtful and difficult things to comprehend."

Now, gentlemen, the persons whom, throughout the passage I have last mentioned, this author has described under the term *they*,

you will be pleased on the part of the public to recollect are those whom he calls the Republicans, Presbyterians, and Sectaries.

"To these men, and to this sinister design, we are indebted for the jargon of which I have just complained. They invented"—you see with what truth and accuracy in the history of this country this is stated—"They invented the term *Revolution*, to blind and mislead." They invented it!—"and they have never ceased repeating it, that they may put the people in mind of making another." Gentlemen, those who have used it, in the most solemn proceedings in this country, as I shall have occasion to establish to you by-and-by, have used it, for the very purpose, as I apprehend, of not putting the people in mind of making another, but of putting the people in mind, that by the transactions of that day, both with respect to the regal government of the country, and the interest of the people in their rights and liberties, as well in the one view of the constitution as in the other, they were then restored, and for ever inviolably to be preserved. "This mystery they have couched under the still more loose metaphysical idea of *Revolution Principles*; and by the glorious spell of—the constitution—they can conjure up any form, fashion, modification, reform, change, or innovation in government they please, and it shall be nothing more, as they pretend, than the genuine true English constitution." The author then proceeds, gentlemen, to state in several passages, which may deserve your attention, remarks upon what is called the constitution. He then applies himself again to the Revolution in page fifty two, where he says, "It appears from the former of these statutes, that the parliament, having placed king William and queen Mary upon the throne, which king James chose to leave vacant by his abdication, stipulated nothing for the people but upon those points where king James had broken the law, or what was understood by the generality of men to be the law of the land. Indeed the nature of the case demonstrates this; for, if what he did had not been against law, he would have broken no trust, and the parliament would have had no ground of complaint."

Gentlemen, I observe here, that it is idle to state, that the parliament may have ground of complaint, if it be true, that the kingly government can go on in all its functions, without Lords or Commons, and, if it may do so for many years; but I am to contend, there is not a principle more false in the law and constitution of the country than that is. "There is only one exception to this; and that is, James being a Papist: that certainly was not against any law; but it was against the disposition of the nation; and it was now the pleasure of parliament, that the king on the throne should be a Protestant, which was accordingly in this statute provided for in future." Now to what follows I would beg your attention, because it appears to me I confess, to be one of

the most important passages in the book; it is not for me to say, that the matter of this passage has been handed to the public with a designed omission of a most important observation; it is my duty to mark the circumstance, and it will be yours to say what intent can be imputed to the author, if the circumstance should appear to you to be properly and accurately observed upon.

Gentlemen, you will find in the Bill of Rights (a part of which I shall have occasion to read to you presently) that there are twelve articles, in which it is stated that king James the second endeavoured to subvert and exterminate the protestant religion, and the laws and liberties of this kingdom. You will find, that there is a solemn declaration on the part of our ancestors that these twelve circumstances were violations of the ancient, indubitable, indisputable rights and liberties of the people of England. You will give me your attention to what has been stated with respect to the king carrying on the government of the country in all its functions without the Lords and Commons; you will find that at that period, at that great era of the restoration of our liberties, in the DECLARATION OF OUR RIGHTS AND LIBERTIES, the parliament state lastly in a thirteenth declaration, "that for redress of all grievances," those enumerated among others, "and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently." Now, says this author who had before stated that passage with respect to the King, Lords and Commons, which I had occasion to read to you, "the other points, which were twelve in number," not taking any notice of the thirteenth, with respect to the necessity of frequently holding parliaments, "were, as I have said, known to be the law of the land before, and were now declared and secured by express definition in parliament, only that what had been recent cause of alarm, what was so deeply impressed on the minds of all, and what might be thought, from late experience, to be of a nature that required it should be solemnly inculcated, might be held up for admonition to future ages."

"What disappointment and discomfiture it must be to these idolizers of the constitution supposed to be established at the Revolution, to discover at length that they have bestowed their applause and affection upon the shreds and patches of old date; and that if they had lived in those wicked reigns of Charles 2nd, and James 2nd, they would have enjoyed in theory, though not in practice (and theory, of the two, is more considered by modern reformers), as good a constitution as they have had since, with the single exception of a Protestant king." The author then goes on to state observations upon what he calls *Constitutional lawyers*, upon what he calls *Whigs*, and upon what he calls *Democrats*; they are many of them observations of great merit, they are all of them observations, which, in a

question between him and the country, will both towards the country, and towards him require your attention; but they do not appear to me to be so material with respect to the question which you are now called upon to decide, as to make it necessary for me to state to you, particularly, what follows in the subsequent pages of this book.

Gentlemen, the great end of all government, of every constitution (by which I mean the frame of the government in every country), is **POLITICAL LIBERTY**; and I shall state those propositions to you in the words of some of the most approved writers in the country. "Political liberty is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public;" and "that constitution or frame of government—that system of laws is alone calculated to maintain it which leaves the subject entire master of his own conduct, except in those points wherein the public safety requires some direction or restraint." It has been observed by a great foreign writer that liberty is the direct end and aim of the constitution of England. It has been observed by a great writer of our own country, that "the idea and practice of this liberty flourish in their highest vigour in these kingdoms where it falls little short of perfection, and can only be lost or destroyed by the folly or demerits of its owner: the legislature, and of course the laws of England, being peculiarly adapted to the preservation of this inestimable blessing even in the meanest subject."

Gentlemen, there are two ways in which the happiest people in the world, if they were wise enough to know their own happiness, I mean the people amongst whom I am now speaking, may lose this inestimable blessing; the one is, by not being wise enough to prize, as we ought to prize, the genuine liberty which we have, but valuing it too little; the other is by valuing it not too much, for we cannot value it too much, but in our zeal for it losing sight of what is its true nature, and losing sight of the obligation which we are every one of us under, to support, at all hazard, what are the genuine and true principles upon which it subsists.

Gentlemen, no government is perhaps a better thing than a government of anarchy, if indeed anarchy must not exist where there is no government; but it is the duty of every British subject to remember that he has a British king at the head of a British constitution to defend; and upon this occasion, I am not sorry, that it has become my duty to have had, in the course of a few years (from the beginning of the discharge of my duties in my present situation) devolved upon me many laborious and painful tasks in prosecuting the subjects of the country; some of whom appear to me to mean the destruction of this constitution by very different means from those which I

have found it my duty upon this record to impute to the author of this book; many prosecutions I have been obliged to institute; but it must be remembered, that the law is equal to all men, and whether the subject matter of the accusation, be a libel upon the kingly part of the functions of the government, or whether it be a work that tends to suppress the genuine feelings of adoration and reverence, which the subjects of this country owe to the other essential parts of the government of the country; each work is equally mischievous, and the law meant to protect the subjects of the country, against the operations of each.

Gentlemen, I am not here *determining*,—it is not my province,—that this author wrote with the intent charged upon this information; it is my duty to submit to you the grounds upon which this charge has been made. Now, I apprehend, that the great principle established at the Revolution (for I must still term it so), which Revolution did not form the constitution of this country, but restored the ancient constitution of this country,—I apprehend, that the great principle established at the Revolution was this: that the legislative government of the country should be in the King, Lords, and Commons; that the executive government of the country should be vested in the king; that for the purpose of carrying on that executive government, he should be endowed with great and high prerogatives, *under various constitutional checks and provisions*, AND WITH A MARKED RESPONSIBILITY IN THE ADVISERS OF THE EXECUTIVE GOVERNMENT TO THE PARLIAMENT OF THE COUNTRY.

The separation of the legislature and executive power in our government has frequently been remarked as one of the sources of the liberty which we enjoy; if they both existed in the same bodies of men, you would soon, as it has been observed, have tyrannical laws executed in a tyrannical manner. The promptness and expedition with which laws must be executed, have led to vesting in the king alone the executive power of the country; but it has been found necessary too that the executive magistrate of the country should be a branch of the legislature of the country, because if the legislature of the country were totally separate from, and unconnected with the executive magistrate, the experience of all countries, and of our own in some instances, has shown that the legislative, would probably assume both powers to the ruin of that liberty which is meant to be preserved by the separation of each.

Gentlemen of the Jury, *the rights*—THE PRIMARY RIGHTS of Englishmen are, their right to personal liberty, their right to personal security, and their right to property—these—without calling your attention to them—have been secured to the subjects of this country by an infinite variety of legislative—I was going to say *provisions*—by an infinite variety

of legislative declarations of what is the common law of the country in which we live. I refer you to those declarations in the statutes of this country, from the great charter of our liberties, through the confirmations of that charter, to the Petition of Right, to the Habeas Corpus act, to the Bill of Rights, to the principles upon which our ancestors acted at the Revolution, and finally to the Act of Settlement.

But, Gentlemen of the Jury, it is to no purpose that the rights of Englishmen are ascertained and explained, unless there are also active provisions for the security of their enjoyment of them, and this the wisdom of the government of this country has provided for, by giving you the opportunity of applying to courts of justice, of petitioning the king and the parliament, and in the essential attributes of that parliament which forms the government of the country. Gentlemen, if the executive part of the government is to act with responsible advisers, it is of necessity that a constitution which has that provision should have made it part of the bounden duty of the king, frequently to assemble parliaments. If, on the other hand, there are grievances and injuries to be redressed in this constitution, which cannot be redressed by the ordinary operation of law, it is equally essential to the liberties and ease of the subject that parliaments should be frequently called; and therefore it appears to me that the great principle, which was restored at the Revolution, is this—namely, that for the redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

Upon this occasion, gentlemen, your attention will be due to every part of this act. It is for declaring the rights and liberties of the subject; it declares that king James, by the assistance of divers evil counsellors, judges, and ministers, employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of the kingdom; it then states the various instances in which he did so, all of which it declares are utterly and directly contrary to the known laws and statutes and freedom of this realm. It then states—"And whereas the said late king James the second, having abdicated the government, and the throne being thereby vacant, his highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did, (by the advice of the Lords spiritual and temporal, and divers principal persons of the Commons) cause letters to be written to the Lords spiritual and temporal, being Protestants; and other letters to the several counties, cities, universities, boroughs, and cinqueports, for the choosing of such persons to represent them, as were of right to be sent to parliament, in order to such an establishment as that their religion, laws, and liberties might

not again be in danger of being subverted:—"They then assert that they are a full and free representative of this nation: They then declare, that all those transactions were against the common law of the land; that for redress of grievances, parliaments ought to be held frequently: And then they "claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example." And then it is enacted, "That all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient, and indubitable rights and liberties of the people of this kingdom; and so shall be esteemed, allowed, adjudged, deemed, and taken to be; and that all and every the particulars aforesaid, shall be firmly and strictly holden and observed as they are expressed in the said declaration; and all officers and ministers whatsoever, shall serve their majesties and their successors, according to the same in all times to come."

This general declaration, that parliaments were to be held frequently, was followed up by an expresse act of parliament, in the sixth year of William and Mary, which declares that by the ancient laws and statutes of this kingdom, frequent parliaments ought to be held; and therefore it declares that from henceforth, a parliament shall be holden once in three years at the least: The effect of which statute is this;—not that the government can go on in all its functions during these three years, but that even with respect to the functions of the executive government, it is to go on under an apprehension in the minds of those who are constitutionally responsible for the exercise of the executive government, that they may be called upon when this parliament is to be called, at the end of this limited time at farthest, to answer for the advice which they have given to the executive power. And, gentlemen, it was not long after: this before a very solemn proceeding took place in parliament; and it surprised me a good deal,—recollecting that I had the honour of being present when his lordship saw a jury of this country not long ago, in the case of Mr. Paine*, convict him for a libel *stated in the record to be, UPON THE HAPPY REVOLUTION OF THIS COUNTRY*—it surprised me, I say, a good deal, that this writer should state that this term "Revolution," according to the passage which I have before read to you, was only to be found in the pamphlets of the times, but forms no part of the legal proceedings, and was not to be found in the parliamentary proceedings of the country. That he should treat that term with the sort of disrespect which throughout the whole of this book you see he attributes to it, appeared to me to be most extraordinary.

* See it, *antè*, Vol. 22. p. 357.

Gentlemen, I will here take leave to state to you, that so early as the year 1709, doctor Sacheverell was impeached by the House of Commons before the Lords House of Parliament, and the charge was this :

"Whereas his late majesty king William the third, then prince of Orange, did with an armed force undertake a glorious enterprise for delivering this kingdom from popery and arbitrary power; and divers subjects of this realm, well affected to their country, joined with, and assisted his late majesty in the said enterprise: and it having pleased almighty God to crown the same with success, the late happy Revolution did take effect and was established. And whereas the said glorious enterprise is approved by several acts of parliament, and amongst others by an act made in the first year of the reign of king William and queen Mary, intituled, 'An act, declaring the rights and liberties of the subject, and settling the succession of the crown:' and the actings of the said well affected subjects, in aid and pursuance of the said enterprise, are also declared to have been necessary, and that the same ought to be justified. And whereas the happy and blessed consequences of the said Revolution are, the enjoyment of the light of God's true religion, established among us, and of the laws and liberties of the kingdom; the uniting her majesty's Protestant subjects in interest and affection, by legal indulgence or toleration, granted to dissenters; the preservation of her majesty's sacred person; the many and continual benefits, arising from her majesty's wise and glorious administration, and the prospect of happiness for future ages, by the settlement of the succession of the crown in the Protestant line." And then the first charge is, that "Dr. Sacheverell, in his sermon preached at St. Paul's, doth suggest and maintain, that the necessary means used to bring about the said happy Revolution, were odious and unjustifiable."

Gentlemen, a person of whom certainly I cannot speak with too great respect—the predecessor of his lordship in an office* which they both held so much to the honour of themselves and the benefit of the country,—I mean sir Joseph Jekyll,—in addressing the House of Lords upon this impeachment, he acted like an extremely wise man, who knew the value of the constitution which was thus restored at the time of the Revolution; who was strenuous for the maintenance of that constitution, and who was much too wise to endanger its existence by a loose assertion of principles which might lead to shake the foundations of that great blessing;—he expresses himself thus: "As it is self-evident that the honour of her majesty's government stands upon the justice of the Revolution,"—I have no hesitation, gentlemen, in asserting, that with respect to his majesty who now

reigns among us—"so doth the peace and tranquillity of it depend upon that also."

"In clearing up and vindicating the justice of the Revolution, which was the second thing proposed, it is far from the intent of the Commons, to state the limits and bounds of the subject's submission to the sovereign. That which the law has been wisely silent in, the Commons desire to be silent in too; nor will they put any case of a justifiable resistance, but that of the Revolution only; and they persuade themselves that the doing right to that resistance, will be so far from promoting popular licence or confusion, that it will have a contrary effect, and be a means of settling men's minds in the love of, and veneration for the laws; to rescue and secure which was the only aim and intention of those concerned in that resistance."

"To make out the justice of the Revolution, it may be laid down, that as the law is the only measure of the prince's authority, and the people's subjection, so the law derives its being and efficacy from common consent†"

"Nothing is plainer, than that the people have a right to the laws and the constitution. This right the nation hath asserted, and recovered out of the hands of those who had dispossessed them of it at several times. There are of this two famous instances in the knowledge of the present age; I mean that of the Restoration, and that of the Revolution;"—mark, gentlemen, what was the effect which this great man attributed to those events both with respect to the people and the king;—"in both these great events were the regal power and the rights of the people recovered." He means, I presume to say, that such a regal power as existed in practice, though not in theory, immediately before this event of the Revolution was not the old British regal power;—"In both these great events were the regal power and the rights of the people recovered. And it is hard to say in which the people have the greatest interest; for the Commons are sensible, that there is not one legal power belonging to the crown, but they have an interest in it; and I doubt not, but they will always be as careful to support the rights of the crown, as their own privileges."‡

Gentlemen, the principle of the constitution, was stated by another great man§ of that day thus: he says not that kingly government can go on in all its functions without Lords and Commons, but that "the nature of our constitution is that of a limited monarchy, wherein the supreme power is communicated and divided between Queen, Lords, and Commons, though the executive power and administration be wholly in the crown."

* Sir Joseph Jekyll's speech on the second day of the trial of Dr. Sacheverell, *ant. vol.* 15, p. 96.

† Ibid. p. 97.

‡ Ibid.

§ Mr. Lechmere: See his speech Vol. 16, p. 61.

* That of Master of the Rolls.

Gentlemen of the jury, I might here refer you to one of the latest writers on the constitution of the country, I mean Mr. Justice Blackstone, where he speaks of the parliament of this country, of the king's duties, and of the king's prerogative, but I will not occupy much more of your time. I state it to you as the result of his disquisition on this subject—as his collection from the laws and statutes of this country, declaratory of the common law of this country, that which has subsisted in it for ages—that the great security of the British subject in the exercise and in the enjoyment of his rights and privileges is (as in the nature of things it must be) the co-existence of King, Lords, and Commons, to redress grievances by legislation, and to redress all those grievances which should arise from an ill-advised exercise of the power of the executive government; the constitution holding every man responsible to the justice of the country for the advice which he gives to the crown in the execution of those duties which it has imposed upon the Crown, and which duties I need not state to you are most solemnly recognized—are most solemnly imposed upon the Crown itself—in that sacred act—the king's taking the coronation oath, when he swears to execute the laws of the country according to the statutes in parliament agreed upon (and which I presume must also mean to be agreed upon) for the amending and strengthening the laws; to execute justice in mercy, and to support the established religion, and the toleration which other persons enjoy in this country. Then, gentlemen, if this be the true principle of the constitution, it is for you to look through this book, and to say, whether the intention of this author is such or is not such as has been imputed to him.

Gentlemen, I shall state to you in this case what I shall have occasion to state with respect to other persons whom it is unfortunately my duty to prosecute in this place in a day or two; if you are of opinion that this is an ill-advised ill-execution of a purpose which was really not criminal, I told a British House of Commons what I hope I may say in every part of Great Britain; it is not consonant to the lenient genuine spirit of the law under which we live, that in such a case you should press a man with the consequences of guilt. But if, on the other hand, you are satisfied upon attending to the whole of this book, that the purpose of the author was criminal as it is charged in this information; that he has attempted to shake the foundation of that security which is afforded to a British subject by our constitution, under the government of a British king and a British parliament; in that case it is your duty, according to all you owe to the constitution and government under which we live, to pronounce that verdict which is due to him, to God, and to the country.

EVIDENCE FOR THE CROWN.

Mr. Benson sworn.—Examined by Mr. Law.
[Afterwards lord Ellenborough and C. J. B. R.]

That is the pamphlet, I believe, which was laid upon the table of the House of Commons?—It is.

Have you had it in your custody ever since?—I have.

Mr. Plumer.—I think it right to state that I am instructed by Mr. Reeves upon the present occasion to say he does not wish to shrink from this inquiry, and he has expressly instructed me to admit the publication.

Mr. Lowten.—This book appears to be published at London, printed for J. Owen No. 168 Piccadilly, in the year 1795: it is intitled "*Thoughts on the English Government, addressed to the quiet good sense of the people of England, in a Series of Letters.*"

[Mr. Lowten read the extracts set forth in the Information, and some other extracts which were called for by Mr. Plumer.]

Charles Mardowal sworn.—Examined by Mr. Solicitor General [Sir John Mitford afterwards lord Redesdale and lord chancellor of Ireland.]

Look at that pamphlet: do you know it?—Yes.

Where was it printed?—At Mr. Wright's in Peterborough-court, Fleet-street.

Are you employed by Mr. Wright?—Yes.

In what way?—As a compositor.

Had you any thing to do with that pamphlet?—Yes; I composed a part of it.

Do you know Mr. Reeves?—Yes.

Did you see him during the time that pamphlet was composing?—Yes.

Had he any concern with it?—I believe he had; I used to see him frequently at the office during the time it was printed, and I believe that he used to have all the proof sheets.

Do you know he had the proofs of it?—Yes.

How do you know it?—By having given the proofs into his own hand myself.

Who corrected the proof sheets?—I do not know.

Stephen Jones sworn.—Examined by Mr. Law.

You are employed, I believe in Mr. Wright's office?—I am.

In what department?—As his overseer.

Did you superintend this pamphlet as it went through the press?—I did.

Did you correct the proofs?—I did.

Did any person in conjunction with you correct them?—Yes, Mr. Wright.

Did any other person [besides Mr. Wright] in conjunction with you and Mr. Wright correct the proofs?—Not immediately in con-

junction with us, a gentleman certainly did correct the proofs.

What gentleman was that?—Mr. Reeves; he superintended the proof sheets generally after I had done with them.

Do you know Mr. Reeves's hand-writing?—I think I do.

Mr. Henry Gunnel sworn.—Examined by Mr. Garrow [Afterwards a Baron of the exchequer.]

What have you in your hand?—Some proof sheets that were produced before a committee of the House of Commons appointed to inquire who was the author of the pamphlet in question.*

Stephen Jones again examined.

Are these the proof sheets that were corrected by Mr. Reeves, and is there any of his hand-writing upon them?—They are the proofs.

Is the hand-writing you see there Mr. Reeves's?—For the most part it is.

DEFENCE.

Mr. Plumer.—[Afterwards, successively, vice chancellor of England and master of the Rolls]. Gentlemen of the jury;—I have the honour to attend you in this case as counsel for the Defendant:—and, gentlemen, it is impossible, in attempting to discharge this important duty to the defendant, and to the public interests which are involved in it, but that I should feel much anxiety pressing upon my mind.

But, gentlemen, I am persuaded, that however ill I may be thought to merit your attention yet your desire to do justice upon this important occasion will insure me a favourable attention to the observations which I shall submit to you, on the part of the defendant; I shall endeavour to deserve this, by confining those observations, as well as I am able, strictly to the question submitted to your consideration in this proceeding.

Gentlemen, the defendant has instructed me not to interpose any obstacles of form in the way of this proceeding, but to let the subject come to your examination in the fullest mode of inquiry which the nature of the case admits. I am, therefore, perfectly ready on his part to admit, that if there be any thing criminal in the passage selected for accusation in the work in question, Mr. Reeves as publisher is unquestionably answerable for it. But I submit to you, and I trust that with a very little degree of your attention, I shall be able to prove to the satisfaction of every one of you, that in this passage which is now the subject of inquiry, there is not to be found, in fair construction, any word, any syllable, which can merit the smallest degree of reproach.

* See the two Reports presented by this committee to the House of Commons, 32 New Parl. Hist. 651, 661.

Gentlemen, in the introduction of this prosecution, the attorney general has been pleased to state to you, that "he conducted it by the command of his majesty in consequence of a resolution of the House of Commons." I should very ill discharge the duty that is imposed on me upon the present occasion, and very little follow the sentiments of the gentleman for whom I appear, if any treatment which he has ever received could possibly induce him to utter or to instruct me to utter one syllable of disrespect to the House of Commons. We all know the high and elevated situation it possesses in this country, how dear it is to every man who values the constitution of the country, and I am sure I cannot name one, who has upon every occasion shown himself more zealously attached to that constitution in all its branches; few who have been equally active; and I may add farther still, few who have been more successful in the defence of it.

But, gentlemen, permit me to say, that this is not a topic which ought to operate on your judgment in deciding the question submitted to your determination. The accusation is neither more true nor more false whether it comes from the House of Commons or from the House of Copenhagen. It is an accusation which must speak for itself; and from whatever quarter it originates, you are to weigh, you are to discuss, and you are to decide it according to the evidence applied to the charge submitted to your inquiry, without any regard as to who made it, who advised it, who sent it here, or by what authority the prosecution is instituted. And I am persuaded you will not forget, while so much is said about the excellent constitution under which we live, how important it is to the preservation of the liberties of the country, to keep distinct the different proceedings of the different branches of the legislature, nor that important observation which is made by a writer whom the attorney general has quoted, that "In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure, by the crown, consists one main preservative of the public liberty; which cannot subsist long in any state, unless the administration of common justice be in some degree separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty and property of the subject would be in the hands of arbitrary judges whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of law; which, though legislators may depart from, yet judges are bound to observe."*

Far be it from me, in any respect to question the right of the House of Commons to accuse, the right of the House of Commons

* 1 Bla. Com. 269.

to impeach, the right of the House of Commons to control and to examine the conduct of every branch of the executive government and the conduct of every individual in the nation. But when they do accuse, I submit to you, that the circumstance of its being an accusation of theirs, ought not to weigh in the judgment of those, who are finally to decide upon it; because if it did, an accusation made not upon oath, *ex parte*, behind the back of the defendant, and where he has no opportunity of being heard, would then operate to weigh him down, when he is brought to his trial before a jury of his country.

The House of Commons are not infallible; the House of Commons may possibly, upon subjects where their own privileges are concerned, be liable to mistake: we do not want the experience of many years to convince us, that in prosecutions conducted by them upon the best principles, with the best motives, and the best intentions, the House of Commons have been ultimately found, in the course of prosecutions which they have been for years conducting, to have been mistaken. Therefore it is, that I take the liberty of laying this topic entirely out of your consideration. I shall examine this charge by itself, without any reference to the authority from which it proceeds, being perfectly persuaded that you will not suffer this topic to operate in the least upon your minds. Gentlemen, again a great deal has been said, eloquently and ably said, in defence of the constitution of this country, and in particular of the necessity of the frequent holding of parliaments—that the very life and spirit of the constitution is at stake, if that principle be not upheld—that the whole freedom of this limited monarchy depends upon it. Much has been ably and eloquently said upon it.—I subscribe to every word of it—I am instructed by the Defendant to say, he subscribes to every word of it—And I defy you to point out, in fair construction, any syllable in this pamphlet, that is meant to impeach the constitution as established by law.—The constitution consisting, as we all know it does, by law, of a legislature in the King, Lords, and Commons; and when we speak of the government established by law, we must be understood to speak of that constitution. And I will maintain that this pamphlet which is now the subject of accusation, instead of meaning in any respect to arraign this constitution, is throughout, from beginning to end, calculated to protect, to uphold, and to support it.

I am persuaded, if you examine this pamphlet fairly, you will see that it is written by an enthusiastic admirer of the English constitution, by one who is labouring hard to show its superiority and pre-eminence over every other that exists; to guard it against the possible attacks of ill-designing men—of those Republicans and Democrats, who, the writer suspects, prevail in the country, and who are working their way to sap and undermine this

glorious constitution so happily established by the law of the land. It is evident from the whole frame and tenor of the pamphlet, from the beginning to the end of it, that it is written by a person warmly attached to that constitution and who is doing his best in support of it. Whether he has executed that purpose ably, whether he has executed his design judiciously, whether he may not in some parts have expressed himself inaccurately or imperfectly, my learned friend with the candour which does him great honour, says, is not for your decision.—He admits that if you really see the intent of the author to be good, to uphold and not to destroy the constitution, to uphold it against all invaders and every one who means to shake any branch of it or any part of it; in that case my learned friend admits the defendant is entitled to your verdict.

Gentlemen, again permit me to advert to another topic of my learned friend's address to you, in which he has gone, at very great length, into many parts of this pamphlet which are not now the subjects of accusation.—But I hold myself bound to confine my attention to that which is made matter of accusation before you.—TO THAT YOU ARE BOUND TO CONFINE YOUR VERDICT.

I do not mean to say, that other parts of the work may not be adduced as context to explain the part that is the subject of accusation; but I take the liberty of saying, that if in the comments which the author has made on the Reformation, or Revolution, or any other public events that are occasionally discussed in the course of the pamphlet, there be thought to be any thing reprehensible or improper either in sentiment or expression, they are matter of substantive charge.—They might have been made so, but they are not.

My duty will be to state distinctly, *what* is the only part of this pamphlet that is now selected for inquiry, and to *that* I shall direct my defence. But, gentlemen, permit me only just to say, in answer to all those observations made by my learned friend, as if Mr. Reeves had treated the revolution disrespectfully, because he quarrels with the term *Revolution*; and what he calls a mistake of Mr. Reeves, to say that the Revolution did not properly pass under that name, whereas it had been so denominated in legal proceedings and therefore it could not be said to be an improper term; all which my learned friend laboured at some length. To all this I answer, that I will not enter into this dispute about names: but I ask you, gentlemen, is that great event calumniated? Is that famous proceeding,—whether it is called a revolution or not, is perfectly immaterial—is that proceeding censured in any respect? Quite the reverse: the author has expressly stated; that the Revolution was brought about by the greatest and best men of the age. He says, it "was brought about by the energy, good sense and firmness, of some of the best and greatest

ment in the nation." He speaks of it in page 40, as "a precedent, that would be regarded with reverence, and with gratitude towards those who made it."

He speaks of it, in another place, as an event of the highest importance, "most of the errors and misconceptions relative to the nature of our government, have taken their rise from those two great events, *the Reformation*, and what is called *the Revolution*."—"Those memorable transactions were conducted in a way that was truly English; the actors in them proceeded with their remedy as far as the disease reached, and no farther; and they never suffered themselves to lose sight of this main rule, that what they did was, to preserve the ancient government, and not to destroy or alter it." p. 25.

Here then we are differing merely about terms; whether what was done then ought properly to be denominated a revolution, or whether it was, historically and accurately considered, merely a restoration of the ancient constitution of the land; namely, that nothing was then done, but to remove the abuses, and correct the errors, which had crept in, as the author says (p. 53) in the "wicked reigns of Charles the second and James the second;" but that all the rights and privileges, then established to us, and confirmed in the famous Bill of Rights were only declarations of the ancient rights and privileges to which the people of England were entitled before the Revolution. And, gentlemen, surely, if we were now arguing, on different sides, upon this question, that man is the best friend to the event of the Revolution, who fixes it upon the basis of antiquity, who states it to be conformable to our ancient system, and our ancient laws; and contends that the whole which was then done, was not any introduction of novelty, but a restoration of those valuable rights, to which the people of England had been intitled from the earliest times;—These were then *declared*, not then *enacted for the first time*;—and he argues well p. 52, that James the second was justly driven from his throne at that time, because he had broken his trust; if the law had not been so before that period, he would have broken no law, and of course no trust.

These, I say are arguments, not of a man who is hostile to the freedom of his country, but of a man, who is only arguing against a term and a denomination, because he apprehends it may be abused to bad purposes. He says, he fears that those, who recur so much to this period, and make so much use of this term, are not so fond of what was then transacted, as they are of "Revolutions in the abstract," and that they wish to lay hold of the term, to make it a precedent for any future revolution they may please to project. They are fond of the term, and cling to the term; for that sole reason, it is, that he quarrels with the term, and endeavours to show, that

this event is no proper precedent for a revolution that does not come up to the case in point; and that the case in point, however termed a revolution, was improperly so termed, being, in truth, only a re-establishment of what was the law before.

But, gentlemen, with respect to one observation likewise, which was made upon the author of this pamphlet, as having attempted to calumniate the Bill of Rights, I must say a few words. It is gravely supposed, that because in one part of it, he has spoken of the Bill of Rights as consisting of twelve instead of thirteen articles, it is, I say, gravely meant to be insinuated, without any enumeration of any particular words,—that the thirteenth in particular was the very one which he meant to exclude. Why so? He has spoken of there being twelve articles, it turns out that there are thirteen; why are you to suppose that any one article in particular more than another was intended by him to be suppressed? But to obviate every possible doubt upon this subject, I will only beg you to observe one passage in this very pamphlet itself, to show whether this is not mere verbal criticism, resting solely upon an accidental inaccuracy in the writer, who has spoken of there being twelve, when, in point of fact, there are thirteen articles. He could have no intention to mislead or misrepresent, when he has, in page 51, expressly referred his readers (if they want to know what was done at that time), to the Bill of Rights, to see what was done; he has pointed it out to their particular attention; he says, "Be it known, then, to all those who have taken their *constitutional information* from pamphlets and political societies, that they have not yet looked into the right place for the history, nature, design, and principles of this supposed Revolution. But if they will read over statute the first of William and Mary, session the second, chapter the second, which is shorter than any of the papers published by the societies for making revolutions, they will find the whole secret explained to them; to which, if they wish a little more light, they may add statute the first of William and Mary, session the first, chapter the sixth, which is still shorter than the other."

Now, gentlemen, can it fairly be argued, that this is the work of a person who meant to decry the Bill of Rights, or who meant not to present his readers with a reference to the best sources of information as to what was the constitution? That this was not to be collected from loose and inaccurate information, but from the best sources, is what he is labouring at from the beginning to the end of his pamphlet, in order that his readers may form their notions of the constitution as it really is (as he expresses himself in p. 58) "regulated by established and known laws. This is the only constitution ever supposed or named by men of sober minds and sound understanding; that is, the constitution of our

government, or the constitution established by law."

Can it possibly be argued, in fair construction, that this is not the language of a man labouring in support of the constitution as established by law, when he refers to the Bill of Rights itself; when he refers his readers to the laws as the best, the surest, and soundest sources of information, saying to them, "read these; collect here your knowledge of the constitution; this is what we are to stand and fall by?" I trust, therefore, that all minor observations upon the particular phraseology of particular parts of this pamphlet, will give way before a penetrating tribunal which will see what is the true meaning of the writer, and that he is labouring in favour of the constitution as established by law.

The particular passage which is more immediately the subject of inquiry to-day, is contained in pages 12 and 13 of the pamphlet; and in deciding this question, you will not have to decide a question of general law, or of general politics.

I will not, gentlemen, follow my learned friend into all the elaborate learning that he has produced upon this subject, to show what is the constitution of this country. It is matter of universal notoriety. It requires no lawyer, no book to be brought to teach us what every man who reads, every man who walks the street, knows to be the constitution; namely, that the whole legislative and executive government of the country is vested in the King, Lords, and Commons: that is plainly and simply the known established constitution of the country; it is matter of universal notoriety; it is level to the understanding of every man who walks; and therefore it is quite impossible to misrepresent it with success, and it is unnecessary to go into any detail of learning to prove what every body knows to be the case.

But it is imputed to this writer that he has, in this passage, misrepresented the constitution in the particulars which the information points out by way of accusation: it states the passage, and puts a construction upon it. We are here, therefore, gentlemen, simply upon a question of construction. I admit distinctly, that if in this passage, the author could have the meaning which is imputed to him, could have any intention to lay aside parliaments, and to vest in the king alone the legislative power as well as the executive, I admit the pamphlet to be a gross and scandalous libel, deserving all the infamy that can be suggested, and its author deserving the severest animadversion and punishment which the law can inflict upon a person, who shall be madman and fool enough, to breach such a doctrine in the face of his country;

The question, then, simply is—what is the meaning of this passage? and I undertake to convince every person who hears me, who comes here with an unprejudiced mind—*I un-*

derstand to convince every person who reads this passage, comparing it with the one that precedes it, that it is quite impossible to understand it, in the sense attributed to it by the information.

The charge states Mr. Reeves to be a seditious ill-disposed person, greatly disaffected to the government of the realm, intending to raise and excite jealousies and divisions among the subjects of the king, to alienate the affections of his subjects from his government, to destroy and subvert the true principles of the constitution, to traduce, vilify, and bring into contempt the two Houses of parliament,—then comes that which is the foundation of all this charge, "With intent to cause it to be believed, that the regal power and government of this realm might, consistently with the freedom of this realm as by law declared and established, be carried on in all its functions by the king of this realm"—Now, gentlemen, permit me to call your attention to the words which follow—"although the offices, duties, and functions of the Lords Spiritual and Temporal, and Commons of this realm, in parliament assembled, should be suppressed and abolished." And in the next count it is to the same effect, though differing in words—"although the Lords and Commons should in future never be assembled in parliament."

The event, then, supposed to be contemplated by the writer, is, a perpetual abolition of the two Houses of parliament, and an assertion, that in case the two Houses of parliament were permanently abolished, the king alone would separately possess every function, legislative and executive. That is the proposition, that is the doctrine fixed upon this passage; and unless that be the doctrine, it is incumbent on you, under his lordship's direction, to find that this information is not proved; you are therefore, to compare it with the work, and see whether that accusation is made out or not.

Gentlemen, the first observation that I have to make upon the passage which is selected, is, that it begins in the very middle, or rather towards the latter end of that part of the work which treats upon this subject. You will observe that the very first line of it purports to be an inference from what had preceded it, for it begins "With the exception, therefore, of the advice and consent of the two Houses of Parliament,"—obviously referring to an antecedent discussion upon the same subject, and being plainly nothing more than an inference or result from something that had preceded it. Surely it is but fair, in examining what is the true intent and meaning of a writer in a particular part of his work, to look at that passage which precedes it, because it clearly imports a direct communication with it; yet the whole of the argument on the other side has entirely proceeded on the fallacy of fixing upon certain specific words, removed from their regular connexion, and giv-

ing to a metaphorical expression a literal meaning—fixing upon a general expression in a passage where, as you will presently see, the extent of the king's power was not the subject of discussion, and giving to such general expression the utmost possible effect, leaving at the same time wholly unnoticed all the specific doctrines upon this very subject, which are stated expressly by the same writer in the passages that precede it.

Gentlemen, the writer of this pamphlet is accused of having misrepresented the nature of the English government. The discussion begins in p. 9, and goes down to p. 13; the subject is particularly discussed in those intervening pages; surely it will be but fair to take the whole, and examine it altogether; and I trust you will agree with me, that the rules I am now about to state, as applied to a subject like the present, are fair rules in determining upon a question of libel or no libel.

First, that if a passage is capable of receiving two meanings, one of which imputes to the writer a doctrine that is in itself absurd, ridiculous and illegal; and the other of which will contain doctrine that is consistent with law, consistent with reason, and consistent with the principles of common sense, that then the latter sense is to be adopted in preference to the former.

Secondly, it is a fair rule of construction, if a particular passage is capable of receiving two senses, and one of those senses is inconsistent with the opinions of the author, expressed in unequivocal language in another part of his treatise, while the same passage, taken in another sense, will be consistent with the opinions of the same author; that then, by fair construction, that sense is to be adopted, which makes the whole work consistent, and not that which makes one part of it inconsistent with the other.

Another rule of construction, is, that where there is in one part of the work, a general expression capable of being applied to collateral incidental subjects not then directly the point under the writer's eye and consideration, which pressed in the full extent, may subject him to imputations of the sort I have alluded to, opposed to other declarations not of a general nature, but express, precise and positive declarations of the same writer, *when the direct subject is under contemplation*; that then we are to find out the sense and opinion of the writer by referring to the express, rather than to the general declaration upon the subject.

Now, gentlemen, taking all these rules in aid in the decision upon the present subject as a question of construction, I undertake to show you, that by every rule that ever was adopted for construction in any case, and much more in a criminal case, when you are to decide upon the question libel or no libel, and to sentence this gentleman to all the dreadful consequences, which will follow, if you pronounce him guilty in the way sought by this information; if I can show you, upon every

principle; that the sense I am contending for, is the true one, I am persuaded that then you will have no difficulty in your verdict.

I will now state to you, gentlemen, the sense which I put upon these words, and then you will compare and examine it with the passage; and you will see whether it is not quite clear that that was the meaning of the writer. I insist upon it, that in the passage under consideration, the author was speaking of the kingly government in all those functions that belong separately to the king, as being the executive power in the state; and it is not disputed in point of law, if that is the meaning, that it is no libel to state, that the king does possess all the functions that belong to the executive power.

In the next place, I insist upon it, that the passage will be found, in speaking of the cessation of parliament, to speak of a temporary cessation only, and not at all entering upon the question which Mr. Attorney-General has supposed imputable to this author—that he meant to insinuate for what length of time parliaments may be suspended, or in any respect meant to contend, that when they are suspended, the legislative functions belong to the king.

Permit me, in the first place, to suppose that the detached words, separately considered, may admit of a contrary construction,—that if I pursue the metaphorical expression of a branch lopped off, it may be applied to the perpetual suppression and abolition of parliaments altogether—that if you are to press to the utmost possible effect a metaphor (an injudicious metaphor if you please), it may bear this meaning; but surely it will not be said, that you are to construe a metaphor exactly in the same way in which you would construe a treatise not expressed in metaphorical language; some little allowance will, in all cases, be made for men who go out of the common track of plain writing, and indulge themselves in metaphorical expressions. You would in this passage do that, if it stood unexplained by the context; but I trust you will presently see, that I am not contending for any thing, which a fair reader of this will not see to be the true intent and meaning of the writer. I am not arguing, whether the expression, “The kingly government may go on in all its functions,” taken by itself, might not admit of some ambiguity, whether it was not meant to comprehend legislative functions as well as executive. But when we want to find out what is the true intent and meaning of the writer, are we to determine it simply by a general, or by a metaphorical expression? If the writer had not introduced it by any thing that is explanatory of it, perhaps you might have said, “He has expressed himself at least incorrectly, when speaking of the kingly power; but if he has preceded these general expressions, and metaphorical expressions, by language which admits of no possible doubt or

misrepresentation, and from which it is impossible to conceive, that this writer meant to propagate the doctrine, that the king could make laws without the two Houses of parliament, or do any one act of legislation without the two Houses of parliament; then it is impossible to suppose that he could intend to propagate a doctrine of that sort, which militates with his own proposition, immediately expressed in the preceding page."

Gentlemen, the passages that I rely upon, are those in which he has discussed this subject of the extent of the king's power; and surely if we wanted to find out the sentiments of a writer with respect to the king's power, it would be but reasonable to examine what he has expressed, when that subject was directly under his consideration; and you will find this subject of the English government is treated of in this manner: First he defines the extent of the power the king possesses, and the qualifications which, by law, are imposed upon it; he follows that up by contrasting the nature of the executive government possessed by the king, in point of perpetuity of existence, with the temporary existence which belongs to the other two branches of the legislature; then he forms another subject of contrast between the king's power, and that vested in the other branches of the legislature, inasmuch as their power is derived from the crown, but the king is independent. You will find, if you examine the passage, that the subject of the extent of the king's power is first discussed and disposed of; and in this place it is that we should find it, if the writer meant to insinuate that the power of the king in point of extent was a power to make laws without the two Houses of parliament.

Now, gentlemen, he has declared himself directly the reverse; he has, in the most express and clear manner, declared to all the people to whom this subject was addressed, that the king cannot enact laws without the two Houses of parliament; and I will, in order to ascertain this, beg you to judge if it be possible to put a different construction upon the language of page 11:—"Accordingly, the king can enact no laws, without the advice and consent, not only of the *Lords Spiritual and Temporal*, who are in some sort counselors of his own choosing, but also of the *Commons in parliament assembled*." Is that, or is it not, the language of a man, who meant to assert that the king alone could make laws, without the concurrence of the two Houses? Can language express the reverse more clearly than this does? If there are any expressions to be found in any work upon this subject, more emphatic and clear than these are, I desire that they may be stated; for I am at a loss to conceive any where the writer has more plainly negatived and obviated the possible imputation of meaning to contend for an independent power in the king, to make laws without the two Houses of parliament; unless we are to determine

things by their opposites, and, because a man says the king cannot do it, you are, therefore, to impute to him, that he meant to assert that he could; for the information means to assert that the writer declared, that the king could make laws without the two Houses of parliament, when he has expressly declared, that he cannot make any laws without them.

Now, this is upon a subject where expressly he is considering the extent of the king's power in the first branch of it; in page 9, after having, in the preceding paragraphs, commended highly the people of England for their attachment to their limited monarchy—for their attachment to the ancient constitution as established by law; after having extolled them for their good sense, manifested in their sense of the happiness and the prosperity they enjoyed under this mixed monarchy—that they enjoy all that degree of liberty which is consistent with public order and public happiness; thus commending the people of England for their attachment to the constitution as it is;—He then proceeds to state, first, the large power that is vested, separately considered, in the king; he then adds the qualification, that by the just jealousy of the people of England, and by the wisdom of our ancestors, has been imposed upon that quantity of power which is invested for wise purposes in the king,—but he is not left to act uncontrolled, in which case it might be dangerous to the liberties of the people, but receives those rational limitations, those modifications that the wisdom of our ancestors has framed in our mixed monarchy, which, while it provides for all the energy, all the vigour and dispatch, that belongs to the most absolute monarchy, at the same time affords, by those modifications and qualifications, the best security to the people for the liberties they enjoy, public and private. He has expressly, then, in stating the power of the king, and the qualities and attributes that the law gives to him,—having first stated that which I am persuaded will not be cavilled at, because he has expressed himself in one part that the king makes and executes the laws, that he meant in that part to assert that he could make laws by himself—we know it is the language made use of, that the king makes the laws by and with the consent of the two Houses of parliament, surely you will not quarrel with the phrase, because, in the passage immediately subjoined, he states how and under what modifications he makes them; and he adds, when he says the king makes and executes the laws, "These are the original and main principles upon which the plain Englishman, full of honesty and confidence, thinks he may rest for the protection of his person and property. But human institutions will swerve from their original design, and Englishmen will not always confide; jealousies and fears arise, and those must be appeased."

Now, gentlemen, attend to these words; "The reasonable jealousy of an Englishman

seems to be fully satisfied, when a qualification is annexed to the power in the king, first, of making, and secondly, of executing the laws—Is that contending for an unqualified power, as this information charges he does?—“by which his subjects are admitted to participate in a share of those high trusts.” Does he speak of those with disrespect? does he speak of them as something he wants to get rid of? No; he is commending the constitution and this very part of it. He says, first that we have provided for all the strength (by the power we give to the king) of a government; and next, we have provided for the security of the liberties of the people, by the proper, reasonable, and just modifications and qualifications, which are annexed to the king's power, both of making and of executing laws: then he subjoins that observation, “Accordingly, the king can enact no laws without the advice and consent, not only of the Lords Spiritual and Temporal, who are in some sort counsellors of his own choosing, but also of the Commons in parliament assembled.” And then, to show how very little founded is the charge, that he meant to insinuate any thing disrespectful of the House of Commons individually—he has gone on, in that very paragraph, to speak of the House of Commons with the highest possible respect and veneration, to show how safely the high trust that is reposed in the House of Commons, may be continued in them; because, he observes there, that even in the choice of the House of Commons, the people have not confided it to their being chosen by the community at large, “but they are the knights, citizens, and burgesses, who are respectively chosen in counties, cities, and boroughs, by persons of substance and sufficiency, who may safely be trusted with the exercise of a charge where property is in question.” Surely, then, it will not be said, that this writer meant, in any respect, to censure or to speak with disrespect of the House of Commons; on the contrary, he points out their peculiar fitness for the high trust reposed in them from the peculiar caution with which they are elected and sent to parliament; he points out the manner of their election; “*Knights, Citizens, and Burgesses*, who are respectively chosen in counties, cities, and boroughs, by persons of substance and sufficiency.” There is not any one of the paragraphs, which speak of the king's power, that does not contain a qualification, excluding the sense imputed to the defendant by this information.

The very next paragraph begins, “In this manner is the power of the king qualified in the making of laws.” Does that mean an unqualified power of making laws? No; he says, in that manner it is qualified; how? Why, by the two Houses of parliament; that he can make no law without them. Can it then possibly be said, that he has not here expressly contended, not for an unqualified power to make laws, but directly the reverse,

in the clearest, plainest language, stating in the very page the qualification? He is expressly stating the proposition which my learned friend has stated, and which is a right and correct proposition, that is to say, that the king is to have the advice and consent of both the branches of the legislature; and he is here stating again, as a summary from it, “In this manner is the power of the king qualified in the making of laws.” Then he goes on to state the other qualification. “His power in executing the laws is qualified by joining grand and petty juries, in the administration of justice, with his judges. To these two controls on the power of the king.”—There again he enumerates them as properly existing controls.

But, gentlemen, that is not all. The control of juries in the execution of the law, he justly points out, as constituting one part of our valuable constitution, in addition to the check imposed by the concurrence required of the two branches of the legislature in the making of every law: In addition to that, he points out that very control which, as the attorney-general has stated, exists with so much benefit and effect to preserve the liberties of the people of England, “To these two controls on the power of the king, must be added a principle, which gives the nation another security for the due exercise of the kingly power; for though the king can do no wrong, yet if wrong is done by the application of the king's power, as he never acts without advice, the person who advises such application is responsible to the law.” Then, gentlemen, all the advisers of the king—those whom he employs, even in the executive government, are amenable to the law: they can be amenable to no other, whether prosecuted by the king individually, by a private subject individually, or by the Commons collectively, by way of impeachment; they are all responsible to the law, and by the law only must they be judged, whenever they are accused, before a tribunal erected by law; they must be judged by the established law of the land.

All these observations upon the extent of the king's power, are summed up in the first sentence selected for accusation in this information; and it is the corollary, the consequence, and the inference that follows from the doctrine which the author had before explained and illustrated; he states this as a consequence from the preceding observations, in this very paragraph: “With the exception, therefore, of the advice and consent of the two Houses of parliament, and the interposition of juries, the government, and the administration of it, in all its parts, may be said to rest wholly and solely on the king, and those appointed by him.” Is it not so, gentlemen? I ask any lawyer to state, whether that is not truly the constitution;—that, with the exception here stated, the government does rest, and the administration of it, in all its parts, does rest, wholly and solely on the king.

and these appointed by him. I therefore, insist, that the doctrine here advanced, is the true constitutional doctrine, established by the law of England; and that, instead of its being an assertion, that there rests an absolute unqualified power in the king, to make laws as well as to execute them, on the contrary, in the very first sentence of the very passage selected for accusation, is contained an exception, which takes all the sting out of it—which reduces it to a legal proposition, when without it it would be an illegal one, which makes it a qualified, and not an unqualified assertion; which makes it to be a power subject to the control of the two Houses of parliament in making, and of juries in executing the laws; and, I therefore, maintain that the assertion in this information, which imputes to the defendant an intent to cause it to be believed in the country, that the king could carry on the legislative functions without the two Houses of parliament, is directly militating with the express declaration of these precise unequivocal sentiments set forth in the passage of this very work which immediately precedes and is directly connected with the passage now under consideration.

I trust, then, if the writer has, in the first part of his work, distinctly avowed, and unequivocally stated his opinions, you will, in fairness, suppose that the author has not changed his sentiments; if general expressions in the pamphlet afterwards can be reconciled with this, you will not believe that he has altered his opinion directly, but that these subsequent passages, if they are of a general nature, and still more, if they are metaphorical, may be made reconcilable with the sentiments of this author; and that, at least, you can never say—however inaccurate he may have been in expressing his sentiments; you cannot lay your hands upon your hearts and say, *I believe that Mr. Reeves is of opinion that the king can make laws without the two Houses of parliament*; WHEN HE HAS, IN THIS VERY WORK, EXPRESSLY SAID HE CANNOT. If you convict Mr. Reeves, it is for stating this, that the king has the legislative power, without the two Houses of parliament. How will you then, with this pamphlet in your hands, or how can any man breathing say, that Mr. Reeves had that opinion in his mind, when he has directly, clearly, and unequivocally expressed the contrary?

I say, therefore, gentlemen, that it is hanging upon metaphorical expressions—hanging upon general expressions—in a part of this very passage, and not giving the party the full benefit of these clear and unequivocal expressions which are not liable to any possible misinterpretation, which are not expressed in metaphors, which are not couched in general words, but are in precise, positive, and express language; and it is clearly admitted, that if that be the doctrine, it is free from all exception: it is the law of the land, the

constitution of the country, and God grant it long may remain so. I insist upon it, therefore, that Mr. Reeves in stating this, has stated no more than what it is the right of every person to state to be the constitution of the country, as established by law.

Now, gentlemen, let us consider, whether all that follows is not clearly and fairly reconcilable with what I have stated. I do not mean to say, whether it might not have been still more clearly expressed; that is not the question; we are not in a court of criticism; we are not before a jury of learned men, who are to sit and prove every sentence, and to say whether it is so well, so clearly and unequivocally expressed as the best writers with due deliberation might have expressed it; but you are to decide in a matter of crime, and to say whether you do not perceive here throughout, whatever ambiguity may be thrown upon general or metaphorical expressions, whether you cannot discover what was clearly the intent and meaning of the writer of this pamphlet. The subject that follows, I submit to you, if you will have the goodness to advert to it, you will find to be this:—Having ended (as I conceive he clearly does) at the words “and those appointed by him,” the discussion upon the subject of the extent of the king’s power; having delivered his sentiments upon that, he then takes up another point of view entirely; he considers the king contrasted with the two Houses of Parliament, and he shows the superior permanence given by the law to the king in one or two instances. First, he shows a circumstance belonging to the king which does not belong to the two Houses of parliament, namely, his perpetuity:—and here the question is not for what length of time one or the other may exist, but he is forming this point of contrast; our constitution, says he, is composed of three parts, King, Lords, and Commons; the extent of the power of each he has before defined; he then takes them separately, and compares each with the other; and he observes, that the king compared with the House of Lords and House of Commons in parliament assembled has this attribute belonging to him, which does not belong to both or either of the two Houses of Parliament, namely, the unceasing continuance of the executive power; but that they are adjuncts subsidiary and occasional, juries and parliaments are; they do not exist throughout the year; they do not at all times of the year exist; they do not constantly exist; there may be intervals in which they do not exist. I believe the moment in which I am now addressing you is an interval of that sort, when no parliament at all exists,* subsequent to a dissolution and before a new parliament is called. That is not the case with the king; the king’s power is unceasing; the king, in

* A dissolution of parliament took place on the day of this trial.

point of law, is considered as never dying; his political character never ceases for a moment, and the actual existence of the executive power vested in the king is a constant existence of a uniform never-ceasing operation: it is a sort of power which calls for daily exertion, because in the king is vested all the protection of the laws and liberties of the realm; the executive powers of the king execute the laws in every branch of them; all public matters foreign and domestic are daily conducted by the king and those whom he employs; all the branches of the executive government are wholly vested in the king, the making of war and peace—the administration of justice in all its parts—the conduct of our fleets and armies—the executive government in all its branches is wholly vested in the king; and the House of Commons and the House of Lords have no part as actors in that.

My friend said that they [the Houses of Lords and Commons] have a right—they unquestionably have, to examine, to animadvert upon, and in *that way* to control, by their advice—to animadvert upon the conduct of the king and those whom he employs: but they never act in the executive government; they may, by addressing the king, advise; but, by the established constitution of the country, the whole executive government is completely vested in the king, and that power which is vested in the king is called for every day, every hour, every moment, and if it were to cease to exist for a moment there would be an end altogether of all the machine of government; we should be totally without a government (constituted as ours is) if we were without a king. If there could be an intermission of the regal power, all those branches of power which are vested in the king would cease, and the machine could not go on; but it is not so with respect to parliaments, because in the recess, when the parliament is prorogued (which in time of peace it often is for eight months of the year, in ordinary times for six or four months in the year) the executive branch of the government goes on. And is there any thing in this said pamphlet meaning in any respect to impugn or arraign the propriety of the frequent holding of parliaments? Has it any thing to do with it? No. We have only to consider that by the constitution parliaments do not always exist; the nature of their power is to make laws, and execute the other functions which belong to them, which are subsidiary in their nature and occasional, and do not require a constant unceasing perpetuity of existence. But that is not the nature of the power vested in the king; and therefore, what is asserted is perfectly true in point of fact. It is the constitution that the king exists always; the House of Commons and the House of Lords do not exist always; they do not exist in a time of dissolution, in the interval between the dissolution of one parliament and the commence-

ment of another; there is an interval when parliaments do not exist, when one parliament is lopped off, when that branch of the legislature is cut off by dissolution there is a total end of that parliament, and there then becomes an interval when the only power that does exist in the country, as is the case in this very interval, the only power that does exist in this country to protect the subject, to execute the laws, to carry on all affairs foreign and domestic is wholly vested, in all its parts in the executive government—namely in the king. I am persuaded you will see that that is the proposition and the only proposition that is contended for here.

You will observe, gentlemen, that he has coupled it upon this subject with a familiar reference likewise to juries: will any man say that he meant to argue that juries ought not to be frequently called, whenever the occasion requires it, because he has said that juries are occasional and subsidiary to the king's power in executing the laws? Does that mean to arraign the propriety of having juries; or does it in any respect speak of the impropriety of having recourse to juries? No; but he is only speaking of these sort of checks and controls that occasionally exist, not always existing; because, till you, gentlemen, were summoned together and formed into a jury, you did not exist as a jury, nor will you exist as a jury collectively, the instant you are dispersed. But does the writer mean to say he is against having juries in the country, because he has said they are subsidiary and occasional? and how can it fairly be argued that he does not mean the same with respect to parliaments? He only speaks of them as not in constant unceasing existence, contrasted with the king's power, which necessarily is constant and unceasing.

He says, that the government of England is a monarchy, and he now comes to examine that: I hope it will not be said, that it is in any respect improper to assert that; it certainly is a monarchy—a mixed monarchy—a limited and qualified monarchy—how qualified he has before expressed, but we surely have not yet forgotten that; it is not quite driven out of doors that we live under a monarchy; unquestionably that is the nature of our constitution; surely it is no libel to assert that the government of England is a monarchy. Then, pursuing that very familiar metaphor which you know is adopted by all persons who write upon the nature of our constitution and speak of the Lords and Commons as “a branch of the legislature” (it is the common familiar expression that we read of in all books, and in common parlance it is a metaphor that has crept into use) the writer here has taken up that metaphor, and has pursued it a little in the expression upon this subject; taking up the idea of either House of Parliament being a branch of the legislature, which every writer has used without any idea of offence, he takes up the idea that the

monarch is the stock, the origin, and that the others have sprung from him as the ancient stock; now that is another point of comparison, that the monarchy did not spring out of the other two branches of the legislature, but that they did spring out of the monarchy.

That expression, gentlemen, is correctly true in many senses of the word,—in the first place, as a matter of history and antiquity.—I do not mean now to trouble you with a learned disquisition which has puzzled antiquaries upon this very subject; at what precise period the Commons of England first had their existence; which you all know has been the subject of great disquisition between very learned men, Dr. Brady and Mr. Petyt; some attributing it to Henry 3rd, others to Edward 1, and some to an earlier period doubting about the precise origin of it. But the way in which, correctly speaking, at this time of day we must speak of the two Houses of parliament as owing their origin to the king, is this; the parliament is summoned by the king, they exist by the king's writ; the king's writ calls them into existence at this moment; not that he is not bound to issue that writ within a given time, unquestionably he is; by the act of parliament to which my learned friend alluded, the king was bound to call a new parliament within three years; he could not suspend the existence of parliaments for a longer period than three years; but how is it then that they are called into existence? by the king's writ; that writ is addressed to the electors, who are to return their representatives to parliament, and the parliament then meets. The parliament continues in existence by the act of the king the executive power; for he has the power vested in him by law to determine that existence whenever he chooses; whenever the public welfare requires it, he has vested in him the power, by dissolution, to put an end to the actual existence of the parliament in the first year of its existence, in the second, third, fourth, fifth, sixth year, or any period of its actual existence. In that sense therefore the parliament owes its existence to the crown, besides its being historically true that it was created originally by our ancient monarchs; they having called together the tenants of the crown, having formerly sent to cities and boroughs to send a council to advise the monarch upon matters of state. The same form is actually continued down to this very time of day that parliaments are called into existence by the king's writ and exist during his pleasure; that is, during the time the public welfare requires they should exist; but they are at all times during their existence convened, prorogued, or dissolved by the executive power, and therefore derive, in that sense, their origin, existence, and continuance from the monarch as the stock. But then we are to quarrel with one single metaphorical expression; and it is supposed that, when speaking of those branches he said that they

might be lopped off, Mr. Reeves meant to assert that they might properly and justly be suppressed and abolished for ever. That is the inference. It is taking the metaphor, in a literal sense, to the utmost pitch to which it can possibly be pressed in point of sense,—“that they may be lopped off, and the tree remain a tree still.” Why, in one sense it is perfectly true. When a dissolution takes place the parliament is lopped off; the two Houses of Lords and Commons are lopped off; nay it is farther true, if I choose to carry on this metaphor, though I hardly suppose that I am here to be defending precisely the exact application of a metaphor in all its parts, which never was required of a writer in any case much less in a criminal one; but I say that it is true in some respects that all their political character and existence is annihilated. All that very House of Commons never can exist again; all the individuals who composed it, if they should every one of them be returned again to parliament, they would not exist as the same House, they would not exist as the same persons in the same political character. I think I hear my learned friend hinting that the tree, after it has its branches cut off, shoots out fresh branches; so here, when the parliament is lopped off by a dissolution, by cutting off these branches it puts forth new ones, by calling a new parliament; here are new branches that are actually given it by a new parliament being called; it is not the old branch; that is to say, applied to the individuals, it does not consist of the same persons; but it is that there is a new House of Commons called by the king's writ to unite with him as the council that is given to him for managing the affairs of the kingdom.

But, gentlemen, let me suppose for a minute, that this expression “lopped off and cast into the fire” was capable of two senses, namely, as applied to a dissolution of parliament, or as applied to the perpetual abolition and suppression of it; which of the two senses would you adopt? If you take it as applied to perpetual abolition and suppression, then you make the writer to assert that which is illegal, which is contrary to common sense, which is contrary to the known constitution of the kingdom, which is contrary to the express declaration of the author himself in the passage immediately preceding. If you construe it in the sense of a temporary lopping off, in the sense of a temporary “dissolution” or that temporary cessation of existence which arises from a “dissolution,” then it is made consistent throughout with all that the writer himself has said; then it is no libel, no crime; it is consistent throughout and is asserting only what is the constitution.

Then, gentlemen, which of the two senses will you adopt? As fair men I address you, and ask you whether it is possible for you to doubt that he meant it in the latter? for otherwise you make him inconsistent with himself, to be asserting a doctrine the very

reverse of which he had been declaring before. I would, only just incidentally observe that so far from meaning in this very passage to traduce wilfully, and bring into contempt the House of Commons and House of Lords, he speaks of them even in this very metaphor, with respect; he speaks of them as, "goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it." He speaks of the king being "shorn of his honours," when, during the dissolution of parliament, he is obliged to carry on the government without it. Is this the language of a person who meant to insult the two branches of the legislature, or of one who meant to speak of them with respect as existing, and while they exist being goodly branches, contributing to the ornament of the tree, to the utility of the kingdom; and (having before expressed the necessity of their existence) because he has before said that without them the king can make no laws, therefore whenever the necessity does arise of making laws and of raising taxes upon the people, or any other thing that requires the interposition of parliament; then he can do nothing without them of a legislative nature; and therefore it does cause a necessity for instantly restoring those branches by the act of the executive government—by a writ issuing for the purpose of convening them?

Then he goes on to another point of comparison, considering the capacity of the king to act separately, which does not apply to either of the other two branches of the legislature. Now, here, the question is not to what extent he can act; that is not the point immediately under discussion. But the primary point of discussion here is, the capacity to act,—a capacity to do something which does not belong to *them*; and it is in that point of view, and that only, I am persuaded, that you will see he is here comparing the king with the other two branches of the legislature. He says that the king can carry on his functions—all those functions which he has before expressed to belong to him separately, all the executive government—he can carry on all these functions without the Lords or Commons. So he can. I assert now that he can carry on all those functions that belong to the kingly government, which is the execution of the laws in carrying on the government of the kingdom; that which, properly and correctly applied to the subject, is imported by the words used here,—“the kingly government can go on, in all its functions, without Lords or Commons”—or, in other words, the executive government can go on in all its functions without Lords or Commons; but it is not true, *vis à vis*, that the Lords or Commons separately or collectively can go on without the king. He says, “Without the king his parliament is no more;” because, they exist only in parliament assembled; they can only be assembled by the king’s power. As my

lord Coke says, he constitutes an essential part of it. No act can be done by the parliament without him. They do not exist for any one purpose, when the king is not in existence. We are not saying that the House of Commons cannot form resolutions without the concurrence of the king; that is not the point; but the assertion is, that if by any means the king ceased to exist, there could be no such thing by our constitution, as a House of Lords and a House of Commons in parliament assembled. But he says that the two houses of parliament may for a time cease to exist, and yet all the executive government may still be carried on, during that interval. That is the point of contest which the author makes between the statute of the king’s perpetual, unceasing existence, and that temporary, and subsidiary, and interrupted existence, which applies to the other two branches of the legislature.

Gentlemen, if there could be any doubt upon this part of the subject, as to what is meant by saying that the kingly government may go on in all its functions without Lords or Commons; the context of this very page explains it; because, if you observe, this expression is not only controlled by what has gone before, excluding the legislative power, because he has expressly said, that he can make no acts without the other two branches of the legislature; but, if you look at this very passage, it is clearly explained in a way to obviate every possible misunderstanding, by a reference to what is under daily observation; to all the king’s subjects to whom this pamphlet is addressed, to all the people of England it says,—“It has heretofore done so for years together, and in our time it does so during every recess of parliament.”

Gentlemen, with respect to that as an historical truth, we all know that formerly, in point of fact, the king has actually gone on with the government during a period of twelve years (and in some instances I believe of more) without calling a parliament. I do not say that was constitutionally and properly done; but here he is only speaking of the fact of the government having actually gone on. And in speaking of the present times, he does not say that it may do so for years together, or that he means to insinuate that it would be right to intermit the calling of parliaments for years together; but he has in this place stated that in the same manner in every recess of parliament, the king’s functions do go on without Lords and Commons. That establishes the position that he is contending for,—the capacity of the king to act separately in certain cases, without the aid and assistance of the other two branches of the legislature. Is there any thing exceptionable in this doctrine? It is precisely the sense that is expressed by that very writer, whom my learned friend has referred to—by Mr. Justice Blackstone, in his Commentaries upon the Laws of England. He says, (Vol. i. p. 150.) “It is a

branch of the royal prerogative, that no parliament can be convened by its own authority, or by the authority of any, except the king alone. And this prerogative is founded upon very good reason. For, supposing it had a right to meet spontaneously, without being called together, it is impossible to conceive that all the members and each of the Houses, would agree unanimously upon the proper time and place of meeting; and if half of the members met, and half absented themselves, who shall determine which is really the legislative body, the part assembled, or that which stays away? It is therefore necessary that the parliament should be called together at a determinate time and place; and highly becoming its dignity and independence, that it should be called together by none but one of its own constituent parts; and, of the three constituent parts, this office can only appertain to the king: as he is a single person, whose will may be uniform and steady; the first person in the nation, being superior to both Houses in dignity; and the only branch of the legislature that has a separate existence, and is capable of performing any act at a time when no parliament is in being."

Here you see, gentlemen, is the same doctrine; it is not novel; it is nothing abstruse; the author is only speaking of that circumstance which belongs exclusively to the king contrasted with the other two branches of the legislature,—that he has the power to act when the others are not in existence, but *they* have not the power to act when *he* is not in existence: that is the whole of the doctrine contained in this paragraph. Then, taking it from beginning to end, what is there asserted upon the whole of it but this; that in these particular points of contrast, the king differs from the other two branches of the legislature, in respect to *his* existence being constant and theirs subject to interruption; *his* power to act being a power to act without them, their power to act being confined to the time when *he* is in actual existence? This is the doctrine of the law; this is the doctrine of this pamphlet. Taken in this sense, it is innocent; it is consistent with all that has gone before; it is consistent with the best writers: but taken in the sense which this information imposes upon it, then it is altogether inconsistent, illegal, absurd; all these consequences must follow, if you adopt that sense in preference to the one I have been contending for.

I shall only just observe that he sums up all this doctrine, upon the nature of our government with these observations;—(the stating of which shows that he meant to contend for nothing but the actual constitution as it was, and not to contend for any change which should be made in it) he says, "Such are the principles and constitution of the English government delivered down to us from our ancestors; such they can be demonstrated to be from the incontestible evidence

of history and records; and such it is wished they should continue by nine-tenths of the nation."

What is the constitution that can be proved by records and by history incontestibly? What is the constitution that nine-tenths of the nation wish to continue—not to be framed anew, but wish to continue? What is it but the constitution as I have explained it, that the legislative power should continue to be exercised (as it is, in daily exercise) by the King, Lords, and Commons?—that the executive branch should continue to be exercised by the king alone, separately existing? These are the ardent wishes of nine-tenths of the nation who love and admire their constitution; but can it be supposed that nine-tenths of the nation wish for the abolition of the two Houses of Parliament? Do they wish to vest all the power in the king alone? Is that the wish of nine-tenths of the nation, or can it be so stated in this address to the people of England, telling them that the characteristic good sense which distinguishes them above all other people, in every other country, exists in their attachment to their laws and government? It is supposed that Mr. Reeves means to tell them that the king exists without the two Houses of Parliament, and has the power of making laws, and that that is the wish of nine-tenths of you;—you are all wishing to abolish the two Houses of Parliament, and to make the king absolute. Can such egregious nonsense be imposed upon any man breathing? Can it be supposed that a writer, who addresses himself to the "*good sense*" of the people of England, who declares expressly he could only succeed by his doctrine being conformable to the "*good sense*" of the people of England, could mean to be so understood?

He says, "an Englishman loves liberty;" he speaks of "his jealousy of power;" for which he commends him. Good God! gentlemen, can you then, believe, that when he is addressing himself to such a people, he would say that nine-tenths of them would be willing to adopt this nonsensical jargon, this absurdity which every man, woman, and child, that walks the streets, would tell him he is a madman and a fool for broaching—that the king could make laws without the consent of the two Houses of Parliament? There is not a child that lisps that would not tell him it was rank nonsense. Can it then be believed that this writer, a gentleman well educated; a gentleman, who has distinguished himself, upon all occasions, by his knowledge of the laws of his country; who has very early given a proof of it, very much to the advantage of the profession to which he belongs in giving a "*History of the English Law*;" who on that account has been selected as a person entitled to the high offices in which he has occasionally been employed; can it be credited or believed than any man fit for any place but Bedlam, could possibly say, "I address myself to the good sense of the people of England, who love

liberty, who are jealous of power, and so attached, above all things, to their constitution, that nothing can ever make them alter or swerve from it; I tell you all this, that nine-tenths of you are desirous of making your king an absolute monarch, and of putting an end to the Lords and to the Commons, whom you yourselves elect; all the share you have in the government, you want to destroy; you are desirous, nine-tenths of you, that that should be the constitution of your country."

Good God! what gross absurdity, what nonsense, and folly is this! Not only so, but he says that "it should continue;" that means that it should go on as it does, not that it should be altered. But can any alteration be greater than this, that in future the king should no longer make laws by and with the advice and consent of the Lords and Commons in parliament assembled, but that he should make laws without them? Can any change be greater than that? Is that continuing as it is? Is it not to alter it, root and branch; to make the greatest revolution that ever was thought or heard of in this country? Can any man be such a madman or a fool as to suppose that, in these days, when undoubtedly the current is running not in favour of despotism, to suppose it possible that he could succeed in this mad, wild, and absurd attempt, to persuade nine-tenths of the people not that it ought to be, but actually is so now, and has been so from all time? for he is not arguing upon what it ought to be, it is not theory, but he is saying in point of fact, what it can incontestably be proved to be from history and experience.

Good God! can it possibly be believed, that Mr. Reeves did not know that the king could make no laws without the two Houses of Parliament? If he did know it, can you possibly believe, that he could have any motive for telling the people, that that was the constitution which he knew was not; and telling them that it could be proved by history and experience, and that so it was believed to be by nine-tenths of the people of this country?

I say, therefore, considered in that point of view, when it has this sort of sense imposed upon it, not being written by a man who is seeking to establish any change in the constitution, or who is finding fault with any thing; but addressing them, as he says in the outset, in that temper of mind, which is produced when we contemplate what may be considered as the cause of all the happiness we enjoy in this country; this is not the case of a grumbling, discontented republican; it is the language of a man, happy and contented under the constitution under which he lives: he says, I address you in all that temper of mind which results from contemplating the happiness we all enjoy; he is in every part expressing his warm and urgent wish that the government should continue as it is;

he says, that an Englishman, "knows the value of what he possesses better than lightly or hastily to wish for a change, and he dreads every change may be for the worse." In every part of it, you will see that he is deprecating every new-fangled innovation, or attempt to innovate upon the constitution; the whole drift and object of the pamphlet, from one end to the other is, to keep at a distance every attempt that can be made by theoretical men, to introduce their fancied reformations into the constitution: thinking that the constitution under which we live, as it is established by law, existing as it does by the incontestable evidence of history and records, is the best constitution that ever was framed by the wisdom of man, for the happiness and security of the people.

Is that the language of a man who wishes to destroy the constitution of this country, to take from it that which constitutes its characteristic excellence; namely, its being a limited monarchy, in which the great quantity of power vested in the king is subject to the control of the two Houses of Parliament and juries? this excellence of our constitution Mr. Reeves, throughout, commends, extols, and applauds the people for having uniformly adhered to; whom, in all the periods he alludes to, in all these different events he speaks of with commendation for having conducted them, with moderation, for having not disturbed the ancient government of the country, but restored it. He deprecates their being made use of as any precedent to overturn the constitution, and entreats us rather to observe, that they were uniformly the perseverance of a loyal and free people, to secure their rights and liberties, as they did at the time of the Revolution; and he says, these were glorious events, conducted by the best men of the kingdom—people, to whom we look back with reverence, and with gratitude. He speaks of these different periods, as precedents, not to be made use of in the way that evil designing men may make use of them, to overturn the existing government; but, he exhorts the people of England to continue to be sensible of the blessings they enjoy under the government under which we have the happiness to live; to adopt that *good sense*, and persevere in it, for which he commends them; and, throughout, he is contending in every part of it, in favour of the constitution as established by law.

I say, therefore, gentlemen, construing this pamphlet, and this passage in particular, in the way that any person not in a court of justice would construe a passage, by looking at the whole context immediately upon the subject which we are discussing, namely, with respect to the extent of the king's power, looking at all the sentiments of the writer, upon that particular subject—taking it by all the rules that I have taken the liberty of referring to, which will operate undoubtedly in criminal cases, I trust you will not be induced to

prosecute him guilty, if you are not thoroughly satisfied, that the meaning of this writer was what is imputed to him in this information. I am persuaded you are men of honour and character, and will tender the important and valuable interest which this gentleman has at stake not to have fixed upon him the degrading infamy which, if you find him guilty of the charge brought against him by this information, is fixed upon him for the remainder of his life—that of being a disaffected man, and labouring to subvert that constitution which his whole life has been spent in supporting.

Before you fix a charge of such weight and magnitude upon any one of your fellow subjects, you will carefully see, whether it is not possible to put a different construction upon the passage selected for inquiry. I have taken the liberty of submitting my humble sentiments to you upon it. I say, that taking this passage in every way, comparing it with what precedes, comparing it with what follows, comparing it with the spirit and temper of the pamphlet in every part of it, which was written by a person wishing to support the existing government, there can be no doubt but that this particular passage is not criminal in the way in which it is stated by the present information; even if you should disapprove of the manner in which this passage is in any respect worded, yet that you can have no doubt of what the real, true intent and meaning of the writer was, and consequently can have no hesitation in giving your verdict for him.

REPLY.

Mr. Attorney General.—Gentlemen of the Jury;—It is due to the faithful discharge of the very important duty which it is allotted to me, this day, to execute, to call your attention to some remarks upon the observations which have been made in this case on the part of the defendant.

I should, indeed, very ill represent those who have brought forward this accusation, if it were possible for me, in the situation which I hold, to call upon you to give a verdict of guilty against any fellow subject, who has the protection of that system of law, which this information is brought to vindicate, upon the ground of inaccurate expressions; if you were obliged to find that verdict by the help of able criticism, if I were to press you to convict the defendant, because you were persuaded that a rash, or an ill-considered expression had been used for a good purpose, and that that was all with which this defendant was truly charged by this information. Gentlemen, I rise again to state, that I do no such thing: I ask your verdict upon these terms, and upon these terms only; that your minds shall be conscientiously satisfied, that the passage stated in this information, was ushered into the world by the present defendant, with some of the intents charged in the different counts of this information.

But, I am obliged, gentlemen of the jury, again, very shortly, to interrupt the execution of his lordship's duty, and your making deliverance between the prosecutor and the person here charged—by desiring your attention to what the charge really is; for ably, feelingly, and constitutionally, as my friend has executed this duty, he appears to me not fairly to have looked the real charge upon this information in the face.

Gentlemen, the prosecution is, as I think no man can deny, after what has passed, an useful one; for no man can deny that the *prima facie* meaning—God forbid that you should therefore infer guilt—that the *prima facie* meaning of many passages in this book, is at least so disputable as to call for a disavowal of that *prima facie* meaning, for the satisfaction of those who are interested in the true understanding of the constitution of the country. When I state this to be the *prima facie* meaning, I am not pretending to assert before you—that is for you and not for me, to decide—that the *real* meaning is so obnoxious to the true principles of the constitution. But I will venture to offer this to your consideration, that though I agree with my learned friend, that the dignity of an accuser must never entrap the consciences of a jury, who must ever remember that accusation and conviction are different things; though I agree to that, I cannot go along with my friend in the observation he has made upon a proceeding in parliament, with reference to an accusation which ended in an acquittal. The natures of that proceeding and of this are perfectly different. This is the case undoubtedly, of the House of Commons, merely as an accusation, in discharge of a duty, which one should suppose it was not very difficult to execute—in discharge of their duty duly to consider the import of the whole of this pamphlet, before they came to this prosecution; that simple duty they did execute, by the resolution the terms of which I have stated to you.

The other case—a case of complicated facts—a case consisting of very different circumstances as it must necessarily be exhibited in accusation, and as it must be exhibited in defence—is a species of case, in which it very naturally and very probably belongs to those, who attend to the duty of making accusations with the most anxious care that they should not make them upon loose and idle grounds, to mistake what will be the true result of the matter which is to be examined into in consequence of the accusation which they make.

Now, gentlemen, the charge here is this; not that the king can legislate alone—but I beg your attention to the words of this information, and I beg your attention to the words of every count in this information, and then do that justice between the prosecution and the defendant which is due to the country, and which cannot be due to the country unless it is due to the defendant—the charge is; that the intent was, to cause it to be believed,

not that the king's power in legislation, but that the regal power and government of this realm (which regal power and government of this realm consists, as you know, in a participation of the legislative power, and in the exercise of the executive power, subject to the revision of parliament, with respect to the conduct of those who advise; that revision being one of the first duties as well as the first privileges of parliament)—that the regal power and government of this realm might, consistently with the freedom of this realm—that freedom which is asserted in the Bill of Rights—as by law declared and established, be carried on in all its functions by the king of this realm, though the parliament should be suppressed and abolished; that is the first charge.

The second charge is, not with respect to the king's power in legislation, but with respect to the king's regal power and government as I have explained it; that it might be carried on in all its functions, though the parliament should in future never be assembled; with intent to cause it to be believed, that the holding of parliaments is not essential to the exercise, according to the freedom of this realm, of any of the functions of the king of this realm in the government thereof—not confining it to his functions in legislation. And then there is another count to which your attention will be, I apprehend, also particularly due: namely, a count which charges the author with an intention to bring into contempt (which in legal language means to reduce below its just standard in the opinion of the country), the power and dignity of the two Houses of parliament of this realm.

Gentlemen, before I apply myself to trouble you with an answer to the particular remarks my learned friend has made upon the passage which forms more peculiarly the subject of the information, you will permit me to take notice of what has been observed to you, when my learned friend stated, that I had gone into many parts of this work which were not made the subject of accusation, though they might have been substantive charges; and he particularly refers to the passages I stated respecting the Revolution. With respect to that, I apprehend, it is some concession that we know what the Revolution is; and the language in this pamphlet, touching the Revolution, it is represented might have been made matter of substantive charge in this information, if it is blameable; but I think it cannot be denied to me, that your attention will be particularly due to the passages which are contained in this pamphlet respecting the Revolution, if they so bear upon the passages stated in this information, as to satisfy your consciences what was the true intent and meaning of the author, when he published the passages so stated in the information.

Gentlemen of the jury, taking it for a moment that it may mean—I am not now asserting that it does mean, but that the passage which says that the kingly government may

go on in all its functions, without Lords or Commons, may mean—either that the king might go on in legislation without them; or that he might go on in the exercise of his executive power, without being bound to subject to the revision of parliament those who are his advisers in the execution of that power. I say, if the question be, whether that is the meaning or not, the passages in this pamphlet with respect to the Revolution, become highly important indeed; because, I must submit again to your attention, that the great principle asserted at the Revolution, was that contained in the thirteenth article of the Bill of Rights—That for the redress of those grievances which had existed, and for the amending, strengthening, and preserving of those laws, which are declared to be the birth-right and inheritance of the subject, it is declared as the great principle of our constitution, that parliaments ought to be held frequently. There may be a considerable degree of accuracy and truth in a passage which has been stated with respect to the theory and practice of our constitution as it existed before the Revolution—that the laws of this country were the birthright and inheritance of the subject in the time of Charles the second, and in the time of James the second, and in other reigns prior to the Revolution; but if there were interruptions of parliaments for the space of twelve years, what signify the other securities that a British subject has for those liberties which are allowed to be his, unless he can insure the enjoyment of those liberties by the frequent assembling of parliament for the purpose of redress of grievances, and for calling the revision of parliament upon the conduct of those who are entrusted with the constitutional duty of advising the king in the exercise of his executive power?

Gentlemen, I call your attention again to the passages which have been selected and observed upon by my friend. He says, "the term Revolution" which by the way Mr. Justice Foster did not feel it inconsistent with his duty, sitting in judgment, to state to be "a most auspicious period, when the principles of liberty were well understood and most gloriously asserted:"* and my lord Camden, sitting in judgment, felt no difficulty in using the term and in declaring that "the Revolution restored this constitution to its first principles. It did no more. It did not enlarge the liberty of the subject; but gave it a better security. It neither widened nor contracted the foundation, but repaired, and perhaps added a buttress or two to the fabric."† One was a clear unambiguous declaration, that for the purpose of carrying on the frame of the constitution of this government, parliaments must be held frequently; the Lords and Commons must meet frequently. It is here stated, undoubt-

* Fost. 171.

† See Vol. 19, p. 1068.

edly, that "that event which was brought about by the energy, good sense, and firmness, of some of the best and greatest men in the nation, was of a nature (unlike most good things) to be helped on by the concurrence and approbation of some of the worst men that could be found. But there was this difference between the two descriptions of agents; what was merit in the one class of men was none in the other. Those who loved the ancient government, and knew the value of monarchy, had great prepossessions to sacrifice before they could take such a step, though for the preservation of both, and though they knew that on the preservation of both depended their laws and liberties. But the rest, who had no partiality for monarchy, or who were ignorant or careless of its value; the *Republican*, the *Presbyterian*, and the *Sectaries*, to whom may be added a long train of the abandoned and dissolute; nothing was more easy to them than to join in any thing that looked like successful rebellion. Those who hated the very frame of the government could not but be pleased with the shock it now received: some hoped that the change might lead to other innovations; those who had been used to pull down and destroy gladly saw a prospect of reviving their old trade; persons without a determinate object were yet too much amused with novelty not to be on the side of the authors of it.

"Whatever were their motives for joining in the new settlement, the *Republicans*, *Presbyterians* and *Sectaries*, did not fail soon afterwards to urge their merit, and it must be confessed not without some show of reason. It was a fortunate crisis to them; they now saw a government which they had a hand in rearing."

Now, if the principle of the revolution be, to assert for the subjects of this country the necessity of frequent parliaments, I should be glad to know whether observations upon that revolution are not fairly connected with the passage which is to be the principal object of the observations that I have to make presently. It is, "to these men, and to this sinister design, we are indebted for the jargon of which I have just complained. They invented the term *Revolution*, to blind and mislead; and they have never ceased repeating it, that they may put the people in mind of making another." I think I am fully entitled to say this,—whether more belongs to it is for you to determine,—but I cannot help saying that this mode of treating that great event in the history of this country, is inconsistent with the true principles of that event. The other passage, which I before stated for your attention was this; "It has been vulgarly called, *The Revolution*; upon what authority I know not; it was not so named by parliament, nor is it a term known to our laws." I forbear any farther remark upon that; you have already seen how far it was known to parliament, how far it was known to our laws; and you have seen that it has been the anxious

business of parliament and the law, to vindicate the security which that event, so termed, gave to the subject and to the constitution under which he lives.

Gentlemen, we are told, with respect to the constitution under which we live, that there are passages—and your attention has been particularly called to one in pages 57 and 58 of this book, which I will take the liberty of reading; "but the English government is real and substantial; we see and feel it: we can take its height and its depth; and we know its movements, because they are regulated by established and known laws. This is the only constitution ever supposed or named by men of sober minds and sound understanding; that is, *the constitution of our government or the constitution established by law.*"

But permit me to state, gentlemen, that this passage imports absolutely nothing, that you can be satisfied in your consciences, when you look to the other parts of this work, that the author meant to represent to the public that it was part of the constitution of our government—that it was part of the constitution established by law—that it was according to the freedom of the realm, as the Bill of Rights expresses it, that the king should govern in the manner in which this record has stated he might; always attending to this; that the king's government is to be divided, and considered with reference to that division, into *his share in the legislative government* and *his power in the executive government* of the country.

Then all these passages expressing approbation of the constitution, I am bound to submit to you as amounting to no more than this; that they are an approbation of the constitution such as *this writer has stated the constitution to be*, in pages 9, 10, 11, 12, and 13 of this book: and the question is has he or has he not, in the passages to which I am now begging your attention, stated—not as the matter now stands—but that the state of the government, as established in this country, is such that, according to its true principles, the king can exercise the functions of government without Lords or Commons? I would beg your attention to the whole of this passage; for undoubtedly a man is to be tried by the fair sense of what he writes. He is to be tried by that sense of it which men of conscience and honour will say fairly and reasonably belongs to it; and not to be tried by spelling out senses or collecting a meaning by criticisms, which might not affect his mind at the time he wrote or published it. Your consciences are to be satisfied, that the meaning which this record, in some or one of the counts, has put upon this passage, is the real meaning which the author intended to express, and the real sense which the author meant to publish.

He states here, "it is an hereditary king, who bears all the burthen of government, who is endued with all the power necessary

to carry it on, and who enjoys all the honour and pre-eminence necessary to give splendor to so high a station. It is the *king's peace*, under which we enjoy the freedom of our persons and the security of our property;" there then follows a passage, and my learned friend does me justice when he supposes I would not forget a qualification which is subsequent to it—but I call your attention to this passage because it describes what the author conceives to be the functions of the king "*he makes, and he executes the laws*,"—his functions therefore, according to this representation, are the making and the execution of the laws. "These are the original and main principles upon which the plain Englishman, full of honesty and confidence, thinks he may rest for the protection of his person and property. But human institutions will swerve from their original design, and Englishmen will not always confide: jealousies and fears arise, and those must be appeased. The reasonable jealousy of an Englishman seems to be fully satisfied, when a qualification is annexed to the power in the king, first, of *making*, and secondly, of *executing* the laws; by which his subjects are admitted to participate in a share of those high trusts."

Now you will give me your attention, gentlemen, to the qualifications as they are stated; "Accordingly the king can enact no laws without the *advice and consent*, not only of the *Lords spiritual and temporal*, who are in some sort counsellors of his own choosing, but also of the *Commons in parliament assembled*." Permit me here to mention, that this advice and consent is in this passage expressly confined to the enacting of laws, as accurately and strictly speaking, it ought to be. Then it goes on to say, "In this manner is the power of the king qualified in the *making* of laws. His power in *executing* the laws is qualified by joining grand and petty juries, in the administration of justice, with his judges. To these two controls on the power of the king, must be added a principle, which gives the nation another security for the due exercise of the kingly power; for though the king can do no wrong, yet, if wrong is done by the application of the king's power, as he never acts without advice, the person who advises such application is" and I beg your attention to the expression "responsible to the law." *Responsible to the law*; as my learned friend states, responsible to the revision of the conduct of those who advise the executive government; that revision to be made in the exercise of one of the first duties and privileges of parliament.

But, gentlemen, is it possible that by the words "responsible to the law," this writer could mean responsible to the revision of parliament? And if he did not mean responsible to the revision of parliament, as it respects the exercise of the executive power, this gives a construction to the following passages. "With the exception

therefore, of the advice and consent of the two Houses of Parliament" (an advice and consent, which you observe is confined to the enactment of laws and not to any control of the king in the exercise of the executive part of the government; it does not apply at all to the revision of parliament as to the conduct of those who are to advise the executive government) "and the interposition of juries; the government and the administration of it in all its parts, may be said to rest wholly and solely on the king, and those appointed by him. Those two adjuncts of *parliament* and *juries* are subsidiary and occasional; but the king's power is a substantive one, always visible and active. By his officers, and in his name, every thing is transacted that relates to the peace of the realm and the protection of the subject. The subject feels this, and acknowledges with thankfulness a superintending sovereignty, which alone is congenial with the sentiments and temper of Englishmen. In fine, the government of England is a *monarchy*;" a limited monarchy unquestionably it is, and whether those constitutional limitations upon the king's prerogative, which are fixed by the law, and which give it its known and notorious bounds (and which limitations form the liberty of the subject), are sufficiently illustrated and stated in this book, it is for you to judge presently; "the monarch is the antient stock from which have sprung those goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it."

Now, gentlemen, I beg your attention to the next passage; and then it is for you to determine which of us calls in the aid of criticism, in order to give the true sense of this passage. "But these are still only branches, and derive their origin and their nutriment from their common parent; they may be lopped off,—" What is the meaning of lopping off a branch from a tree? Should I be thought to state myself uncandidly, if I were to say now, that the parliament of yesterday—being, as I understand, dissolved to-day—should I speak according to the language of the law and constitution of Great Britain, or should I not at least speak with a degree of hazard that ought to make me subject to an inquiry before a jury, if I were now to say, The king of Great Britain is a tree, there were goodly branches yesterday that gave ornament to him, and shelter to those who sought protection under him; but the Lords and Commons are lopped off?—"and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire." What is the meaning of "cast into the fire?" Is it, or not, destruction?

My friend says, speaking again metaphorically, that there may be new branches springing out of this tree; look at the next passage, and see if that can be the meaning

of it: "The kingly government may go on,"—how is it to go on?—"in all its functions"—the functions before mentioned of making and executing laws; but, if you please so to take it, put out *making* of laws; the executing the laws is one of "all the functions" of the king, and is a function to be carried on, subject, as I before stated, to revision by parliament, and those who advise the king are responsible, and so on;—but how?—with new branches in the room of those which have been lopped off, and cast into the fire? No; without any branches—"without Lords or Commons: it has heretofore done so for years together, and in our times it does so during every recess of parliament;"—I want to know then, gentlemen, whether this assertion does not amount to this, that if the king did not want the advice of the two Houses in his executive government, or if he did not want their consent to make new laws, he could go on executing the old laws without them:—If that be the true meaning of this passage, I am persuaded I need take no pains with you to prove that this is an illegal publication—"it has heretofore done so for years together, and in our times it does so during every recess of parliament; but without the king *his* parliament is no more. The king, therefore, alone it is who necessarily subsists, without change or diminution; and from *him* alone we unceasingly derive the protection of law and government."

Gentlemen, when I am stating whether a proposition be true or not, I am not at all deciding upon the question whether the character charged in this information belongs to it; but we do not derive the protection of law and government from the king alone. At this moment we have no Lords and Commons called together, undoubtedly, by the king's writ; but the protection which my fellow-subjects and I derive from the king is this;—We derive that protection from him which is afforded us by a British king bound, according to the constitution, to convene together a British parliament; and every power of the executive government must, in the interim, be exercised, regard being had to the circumstance that that parliament must come together,—that he is bound to bring them together for the purposes stated in the Bill of Rights, for the redress of grievances, for the amending, strengthening, and revising the laws, and (among other purposes) for the purpose of considering what has been the conduct of those who have been called upon constitutionally to advise him in the interim.

My friend has very powerfully addressed you upon the passage which follows:—"Such are the principles and constitution of the English government delivered down to us from our ancestors; such they can be demonstrated to be, from the incontestible evidence of history and records; and such it is wished they should continue by nine-tenths of the nation." My friend says, can you believe that this gen-

tleman was so much a fool or a madman as to state to this country that the king was to carry on the purposes of legislation without his parliament? I know not what other answer to give to that than this; I say that he has been accused in consequence of its having been thought by many wise and good men that this was the meaning of the passage. It is *your* duty to decide between him and the accusation, and to make deliverance: but when you are asked what he meant, the best way for you to solve that question, I humbly apprehend, is to look at what he has said. If what he has said has had the true interpretation put upon it by this information, I apprehend then it is *your* duty to the country to say he is guilty; if your consciences are not satisfied that this information has given the true construction to the passages which you have so repeatedly heard, it is not the character of British justice—it is not the way of vindicating the privileges of the British parliament to ask for a conviction where it is not due to British justice. With you this matter rests, and I am sure you will conscientiously discharge your duty.

SUMMING UP.

Lord Kenyon.—Gentlemen of the Jury. This case having been so amply discussed on the one side and on the other, very little remains for me to do. Early in the cause, the case was delivered from all necessity of proof; because the first step taken after the attorney general had opened for the crown, was, that the counsel for the defendant admitted the publication by Mr. Reeves. The witnesses afterwards called respecting that fact, appear to me to have been rather unnecessarily called: however, you have heard their evidence.

To a superficial observer, the contest of this day, perhaps may appear very unequal. The prosecution is stated to have commenced in consequence of an address from the House of Commons to the king, to direct his attorney-general to institute this prosecution against a private individual. That is a very beautiful feature of the constitution of this country which is exhibited at this moment in your presence, and in the part which you are to sustain in this cause. A prosecution coming with such high authority, in factious times, and in bad governments, might overwhelm an individual; but the constitution of this country has interposed a JURY between what otherwise might perhaps be the oppressor and the oppressed: the case is sent for you (taken out of the same rank and order of men with the person who is accused) to decide upon his guilt or innocence; bringing with you all that candour and all those favourable impressions and leanings to the side of mercy, which are always adopted in the administration of the criminal justice of this country.

It became Mr. Attorney General in his outset to do that which he did most learnedly and most eloquently,—to display to you the

nature of the British constitution. He went to the most authentic sources to extract his information, and he did it in a manner that did him great honour. But at the time when he did it, I verily believe, he thought that he was not imparting much information to any of those to whom his speech was addressed. Sufficient knowledge of the constitution is a degree of knowledge which we all of us have in our several stations—at least every body who has had a liberal education; it is a knowledge that we have all of us probably about us;—we all know that the legislature of this country consists in the King, the Lords, and the Commons,—that the executive power rests with the king alone, liable to be superintended, and to be corrected too by the two Houses of Parliament—not to be corrected in the king's person, because that by the constitution is inviolable,—“the king can do no wrong”—but to be corrected in those ministers through whose agency active government is carried on; if they misconduct themselves (and there must be a responsible person in every part of the government of this country), they are amenable to parliament, and liable to be punished by parliament, if they transgress the bounds of their duty.

Gentlemen, the power of free discussion is certainly the right of all the subjects of the country. We owe more to it than to almost any other right which the citizens of this country have exerted;—I believe it is not laying in too much claim on the behalf of free and temperate discussion to say that we owe to it the Reformation, and that we owed to it afterwards the Revolution. The discussion which was made by Luther, Melancthon, and the other persons who preceded the Reformation, opened the eyes of the public; and they got rid of the delusions which had been spread by the pope of Rome, and emancipated mankind from the spiritual tyranny they were under, and brought about the establishment of that religion which we now enjoy in this country.

It had the same good effects upon the Revolution; if there are, now and then, little excrescences, or some little film upon the eye, it is better to endeavour to wipe them off tenderly and carefully than to extinguish them violently. Therefore, in discussions of this kind, although licentiousness ought beyond all controversy to be restrained, fair discussion ought not to be too hardly pressed upon.

It has been properly stated by the attorney-general, and it was stated upon a former occasion, when a prosecution of this very sort came on;—for this is not the first prosecution that I have tried, since I have had the honour of sitting under the authority in which I sit here, instituted by the House of Commons and carried on by the attorney-general.—In the case of the King *v.* Stockdale* it was so instituted; he came, an individual to re-

sist a prosecution so carried on; he was not borne down by the weight of the prosecutors; the jury found that the cause came to them without any impression whatever; they judged of the case not because the House of Commons had judged of it, adopting their ideas that the pamphlet was a libel and punishable; but they assumed to themselves the right to judge of it by themselves; they asserted that right finally, and in that case certainly they declared the party whom the House of Commons accused to be Not Guilty.

Upon the trial of that cause, it was stated to them most ably and most eloquently, that in proceeding to form their opinion upon it, they were not to select out a single expression unexplained by the context and unaccompanied by the whole of the book, and for that reason to impute guilt to the party accused. They were advised (as I shall presently advise you) to take the book along with them, to consider the whole fairly, candidly, and impartially; and from a due consideration of the whole to extract what their judgment ought to be upon the passage to which delinquency was imputed.

Gentlemen, you are here to find the defendant guilty, or to absolve him, having respect to the particular passage that is taken out of the pamphlet. If guilt is not annexed to that particular passage, the party goes absolved. But, gentlemen, although you are only to extract your opinion of guilt or innocence from that passage, yet you may (and ought perhaps to) go into the book at large, in order—not from other parts to say whether he is guilty or not, but from other parts to give its extent, its qualification, or restricted sense if you please, to the passage which imputes guilt to him.

Gentlemen, with these observations I shall beg leave to state to you what it is which Mr. attorney-general very candidly states to you you must be convinced of in order to find the defendant guilty—the *quo animo* with which this publication was made by the party. The *quo animo* which the prosecution imputes to him is this;—that he, by this publication intended to raise and excite jealousies and divisions among the liege subjects of our lord the king, and to alienate their affections from the government by King, Lords, and Commons, now duly and happily established by law in this country, and to destroy and subvert the true principles of the free constitution of the government of the realm. It is laid afterwards with some variations in three other counts of the information. The main parts of this charge are; that this was intended to impress upon the public that the regal power and government of this realm might, consistently with the freedom of this realm as by law declared and established, be carried on in all its functions by the king of this realm, although the two Houses of Parliament should be suppressed and abolished. That is the *quo animo* which is imputed to this person;

* See it, ante, Vol. 32, p. 237.

and when you proceed to discuss and to decide upon this point, you are to find whether your consciences are satisfied, that these were the motives which influenced him in the publication. I think that is the way in which the attorney-general, in his opening, stated the nature of the charge.

Now the passage which has been selected in order to prove this I will once more repeat to you. Whether it is new to you I do not know; but it is new to me, for I never read one single line of the pamphlet, nor ever heard one line of it read till I heard it read here; I confess it has been in my power to have read it, but I thought it my duty to abstain from it, and that I should come better prepared to hear this cause (I have little to do in the decision), if I came with my mind totally a blank upon the occasion.

The passage which has been stated to you appears somehow to be rather a mutilated passage, for it begins with words of reference. "With the exception, therefore, of the advice and consent of the two Houses of Parliament, and the interposition of juries; the government, and the administration of it in all its parts, may be said to rest wholly and solely on the king, and those appointed by him. Those two adjuncts of *parliament* and *juries* are subsidiary and occasional; but the king's power is a substantive one, always visible and active. By his officers, and in his name, every thing is transacted that relates to the peace of the realm and the protection of the subject. The subject feels this, and acknowledges with thankfulness a superintending sovereignty, which alone is congenial with the sentiments and temper of Englishmen. In fine, the government of England is a *monarchy*; the monarch is the ancient stock from which have sprung those goodly branches of the legislature, the Lords and Commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it. But these are still only branches, and derive their origin and their nutriment from their common parent; they may be lopped off and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire. The kingly government may go on, in all its functions, without Lords or Commons: it has heretofore done so for years together, and in our times it does so during every recess of parliament; but without the king his parliament is no more. The king, therefore, alone it is who necessarily subsists, without change or diminution; and from him alone we unceasingly derive the protection of law and government." That is the passage which is proved: Whether it was published with the motive or not is the question of the present minute for you to decide.

I have not read through the whole of this pamphlet so as to have brought my mind to a decision upon the point; it is not to be my decision but yours. If I were bound to decide it, if the verdict were to be my verdict, and

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not yours, I certainly should retire; I should take the charge with me, I should examine the charge; I should take the pamphlet with me, I should examine the pamphlet; and I should see, with every fair leaning to the side of lenity and compassion, whether I thought the party was guilty or not. I say, with every fair leaning, but still not with that leaning which is to do away the effect of the criminal law of the country; for it is as essential to the well being of the country that the criminal law should be put in force, as that the civil law should be put in force. To be sure, we are always told that that is to be done in mercy, and the king by his coronation oath is to administer, in criminal matters, justice in mercy; but still it is not to be that blind mercy which obliterates the offence, if the offence is proved. It is with you, gentlemen, to decide; and I leave it in your hands.

The Jury retired to consider of their verdict, and remained out of court upwards of an hour; when they returned into court, the foreman said:

"My Lord, the Jury are of opinion, that the pamphlet which has been proved to have been written by John Reeves esq. is a very improper publication;*

* This censure upon the pamphlet is reported to have been occasioned by one of the Jury, who refused to join in the verdict of acquittal, unless his brethren would express publicly to the Court a disapprobation of the pamphlet; the eleven acquiesced, and the verdict was framed accordingly.

The circumstance of this hostile person being left on the Jury is thus noticed by "The Sexagenarian," in the character of Mr. Reeves, vol. ii. ch. 23:—"The result was, however, finally to his honour, and he was acquitted of the enormous offences, with which he had been charged.

"One incident occurred on the occasion of this memorable trial, which is related in our notes, and which, if the subject of this article should survive to peruse these recollections, he will probably not forget.

"Our Sexagenarian called upon him one morning, previous to his trial, when he had before him a list of the persons who were summoned on the jury. He accordingly asked our friend, if he knew any thing of the private characters, or political opinions of any of these individuals. On examining the names, the writer of these notes fixed on one, to which, for reasons he stated at length, he recommended him to desire his counsel to object.

"This, however, he either forgot, or was, perhaps, too indifferent as to the event, or did not think the cause of objection on the part of the Sexagenarian valid. The result was, that this person was allowed to sit on the jury; but it afterwards appeared, that the

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but being of opinion, that his motives

only obstacle to an immediate dismissal of the charge, arose from the persevering and determined obstinacy of this individual, against

were not such as laid in the information, find him Not GUILTY."

whose prejudices he had been timely, but vainly forewarned."

620. Trial of JOHN BINNS on an Indictment for Seditious Words; tried at Warwick before the Honourable Sir William Henry Ashhurst, Knight, one of the Justices of his Majesty's Court of King's-Bench, on Tuesday, August 15th: 37 GEORGE III. A. D. 1797.

JURY.

Special Jurors.

George Hemming, of Weddington, *Foreman*.
William Holbeach, of Farnborough.
Samuel Aylworth, of Kenilworth.
Francis Edward Holyoake, of Little Horn.
Elias Webb, of Sherborne.
Charles Palmer, of Ladbroke, esqrs.

Talesmen.

Joseph Arnold, of Duddeston, gent.
Samuel Beamish, of Bulkington, farmer.
Thomas Chapman, of Wellesbourn Hastings, builder.
Thomas Geary, of Attleborough, yeoman.
Thomas Wrightson, of Wootton, yeoman.
James Hand, of Attleborough, yeoman.

Counsel for the Prosecution.—The hon. Spencer Perceval [afterwards First Lord of the Treasury, and Chancellor of the Exchequer]; Mr. Coke, Mr. Balguy, Mr. Clarke.

Solicitors.—Mr. White, Solicitor to the Treasury; Mr. Spurrier, Birmingham.

Counsel for the Defendant.—Mr. [afterwards Sir Samuel] Romilly, Mr. Reader, Mr. Fletcher.

Solicitors.—Messrs. Smart and Rosseau, London.

Mr. Clarke opened the Indictment. It was as follows.

INDICTMENT.

Warwickshire, } THE jurors for our lord the
to wit. } king upon their oath present
that John Binns late of Birmingham in the county of Warwick labourer being a malicious seditious and ill-disposed person and greatly disaffected to our said lord the king and the government and constitution of this realm as by law established on the eleventh day of March in the thirty sixth year of the reign of our said lord the now king at Birmingham in the county of Warwick did wickedly unlawfully and seditiously speak publish utter and declare to and in the presence and hear-

ing of divers liege subjects of our said lord the king then and there assembled of and concerning our said lord the king and the government and constitution of this realm as by law established and of and concerning a reform in the Commons House of Parliament of this realm and of and concerning universal suffrage in the election of persons to serve in the parliament of this kingdom and of and concerning annual parliaments and the means of obtaining the same and also of and concerning the soldiers of our said lord the king the scandalous malicious and seditious words following (that is to say) his majesty (meaning our said lord the king) and his ministers are well convinced that that (meaning universal suffrage in the election of persons to serve in the parliament of this kingdom and annual parliaments) is most conducive to the happiness of the people and have granted it to Corsica though he (meaning our said lord the king) has withheld that right from his natural subjects (meaning the people of this realm) our object is to obtain it by every peaceable means in our power for it would be shocking to humanity to shed the blood of our fellow creatures but if they (meaning his said majesty and his ministers) continue obstinate and there should be a time when force is necessary to be used I (meaning himself the said John Binns) hope that there is not a citizen in the room but would shed his last drop of blood either in the field or on the scaffold You are not to think much of your own lives for you are engaged in the cause of posterity though the blood may flow from the axe down the block it will sprinkle the earth and a tree will arise that will spread its branches to future generations If the soldiers (meaning the soldiers of our said lord the king) are called upon to act against you like the national guards who were called upon to fire on the people in the outset of the revolution in France they (meaning the soldiers of our said lord the king) will not dare to draw the trigger or push the bayonet against the preservers of their freedom and their liberty with intent to incite and stir up the people of this realm to hatred and contempt of the

person of our said lord the king and of the government and constitution of this realm as by law established in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity And the jurors aforesaid upon their oaths aforesaid do further present that the said John Binns so being such person as aforesaid afterwards (to wit) on the said eleventh day of March in the thirty-sixth year of the reign of our said lord the now king at Birmingham aforesaid in the county of Warwick aforesaid did maliciously wickedly unlawfully and seditiously speak publish utter and declare to and in the presence and hearing of divers liege subjects of our said lord the king of and concerning our said lord the king and the government and constitution of this realm as by law established and of and concerning a reform of the Commons House of Parliament of this realm and of and concerning universal suffrage in the election of persons to serve in the parliament of this kingdom and annual parliaments other the scandalous malicious and seditious words following (that is to say) his majesty (meaning our said lord the king) and his ministers are well convinced that that (meaning universal suffrage in the election of persons to serve in the parliament of this kingdom and annual parliaments) is most conducive to the happiness of the people and have granted it to Corsica though he (meaning our said lord the king) has withheld that right from his natural subjects (meaning the people of this realm) with intent to incite and stir up the people of this realm to hatred and contempt of the person of our said lord the king and of the government and constitution of this realm as by law established in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity And the jurors aforesaid upon their oaths aforesaid do further present that the aforesaid John Binns so being such person as aforesaid afterwards (to wit) on the said eleventh day of March in the thirty-sixth year aforesaid at Birmingham aforesaid in the county of Warwick aforesaid did maliciously wickedly unlawfully and seditiously speak publish utter and declare to and in the presence and hearing of divers liege subjects of our said lord the king of and concerning our said lord the king and his ministers by him intrusted and employed in the administration of his government and of and concerning a reform in the parliament of this realm and the means of obtaining the same the scandalous malicious and seditious words following (that is to say) our object is to obtain it (meaning a reform in the parliament of this kingdom) by every peaceable means in our power for it would be shocking to humanity to shed the blood of our fellow creatures but if they (meaning his said majesty's ministers)

continue obstinate and there should be a time when force is necessary to be used I (meaning himself the said John Binns) hope there is not a citizen in the room but would shed his last drop of blood either in the field or on the scaffold with intent to incite and stir up the people of this realm to hatred and contempt of the person of our said lord the king and of the government and constitution of this realm as by law established in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity And the jurors aforesaid upon their oath aforesaid do further present that the aforesaid John Binns so being such person as aforesaid afterwards (to wit) on the said eleventh day of March in the thirty-sixth year aforesaid at Birmingham aforesaid in the county of Warwick aforesaid did maliciously wickedly unlawfully and seditiously publish utter and declare to and in the presence and hearing of divers liege subjects of our said lord the king of and concerning the soldiers of our said lord the king and how such soldiers would act if force should be used to obtain a reform in the parliament of this kingdom other the scandalous malicious and seditious words following (that is to say) if the soldiers (meaning the soldiers of our said lord the king) were called upon to act against you like the national guards who were called upon to fire on the people in the outset of the revolution in France they (meaning the said soldiers) would not dare to draw the trigger or push the bayonet against the preservers of their freedom and their liberty with intent to incite and stir up the people of this realm to hatred and contempt of the government and constitution of this realm as by law established in contempt of our said lord the king and his laws to the evil example of all others in the like case offending and against the peace of our said lord the king his crown and dignity.

The Honourable SPENCER PERCEVAL.—May it please your lordship; Gentlemen of the Jury; In the opening of this case (of the merits of which, no doubt can possibly remain in your minds, after hearing the evidence) I do not think it necessary to trouble you with many observations; and indeed if it were not the constant practice of the courts, in cases of this nature, I should not think it necessary to trouble you at all: I shall, therefore, content myself with briefly stating to you, the words, which I will prove, by the most undeniable evidence, to have been spoken by the defendant: leaving it to you, gentlemen of the jury, to consider and determine, whether they could have been uttered with any other intention, than that mentioned in the indictment, and which constitutes the crime: namely, with intent to incite and stir up the people (his hearers) to hatred and contempt of the person of our lord the king, and of the government and constitution of this realm, as by law established.

In the first place, I shall point out for your observation, a few leading facts, proper to be noticed, and which, it cannot be denied, are of a very suspicious complexion.

It was on the 11th of March, 1790, that Mr. Binns, being at Birmingham, assembled a considerable number of persons at a public-house, and harangued them, for a considerable time, on the subject of parliamentary reform; professing himself to be a member of the London Corresponding Society, from which he had letters of credit—with which he corresponded—by which he was delegated—to which he held himself accountable for his conduct, and from whose instructions he was not to swerve; openly asserting that the object of his mission was, to establish or confirm the establishment of a similar society, to correspond with the society in London, and to co-operate with that society, for the pretended purpose of reform.

These, gentlemen, are facts, which, it must be owned, wear a most suspicious face. But I proceed, gentlemen, to state to you the precise words which I will prove him to have spoken, on the testimony of witnesses whose credit cannot be shaken.

The words I shall first notice, and which are contained in the first count of the indictment, are, "That his majesty, and his ministers, were well convinced that annual parliaments and universal suffrage, were most conducive to the happiness of the people, and had granted it to Corsica, though he had refused it to his natural subjects."

If, gentlemen, I shall prove these words, it is impossible that you can for a moment imagine them to have been spoken with any other view than to sow the seeds of disaffection, and incite and stir up the people, as mentioned in the indictment; and which mischievous effect, they were very well calculated to produce.

But, gentlemen, he said farther (as I shall also prove) "that it was their object to obtain it by every peaceable means in their power; for that it would be shocking to humanity to shed the blood of our fellow creatures; but that if they (his majesty and his ministers) continue obstinate, and there should be a time when force is necessary to be used, that he (John Binns) hoped there was not a citizen in the room but would shed his last drop of blood, either in the field or on the scaffold. You are not to think much of your own lives (said he) for you are engaged in the cause of posterity; and though the blood may flow from the axe down the block, it will sprinkle the earth, and a tree will arise, that will spread its branches to future generations."

These are the words, gentlemen, which I take upon me to prove. In the first place, gentlemen, he asserts, that his majesty is well convinced that annual parliaments and universal suffrage, are most conducive to his people's happiness; that his majesty well knows what would make his people happy,

and yet withholds this happiness from them: implying, that his majesty not only knows, but has the power to make his people happy if he would; for, says the defendant, he has granted these privileges to the people of Corsica, though he withholds them from his natural subjects; and thus charging his majesty with partiality towards his new subjects, and with injustice and oppression to his natural subjects, the people of this country.

You will, indeed, be told, by my learned friend, that the defendant did not speak these words of his majesty, but that he himself (John Binns) was well convinced that annual parliaments and universal suffrage, were most conducive to the happiness of the people; so far, so well; but, gentlemen, I will prove, on the oaths of two credible witnesses, that the words were spoken as laid in the indictment; and if I prove this, it is impossible to deduce any other inference from them, than that stated in the indictment.

Mr. Binns, after these extraordinary words, proceeds to say, "that their object was to obtain a parliamentary reform, by every peaceable means in their power;" and you will be told by my learned friend, that he recommended no other than legal and peaceable means. But, gentlemen, if this were the case, why talk of force? why talk of a time when force may be necessary to be used? why talk of a scaffold? of blood flowing from the axe, and sprinkling the earth? why talk of sacrificing our lives to posterity? are these, gentlemen, expressions of peace? No! the natural, the obvious, the only meaning that can be put upon these words, is, that peaceable means were indeed to be made use of, to be tried: but if these failed of their effect, then force was to be applied, and men were to practise the monstrous doctrine of sacrificing their lives in the cause of posterity; this, gentlemen, is a false philosophy. It would, indeed, be shocking to humanity (said he) to shed the blood of our fellow-creatures; but if they continue obstinate, and a time should come when force is necessary to be used, you are not to think much of your own lives, for you are embarked in the cause of posterity; and I hope there is not a citizen in the room, but would shed his last drop of blood either in the field or on the scaffold.

Peaceable and legal means were to be first tried; but if their demands were resisted; if their wishes were not complied with; then, it was that every sinew was to be braced, and they were not to mind shedding the blood of their fellow-creatures, or even to scruple sacrificing their own lives, either on the scaffold or in the field.

Gentlemen, you will not; I am sure, suppose that these are the sentiments of genuine patriotism, in which we are called upon to sacrifice those enjoyments and interests in which our dearest and dearest connections are embarked with us, for the chimerical hope of improving the condition of posterity.

I pass on, gentlemen, to the remaining words in the indictment; "If (says he) the soldiers are called upon to act against you, like the National Guards, who were called upon to fire on the people in the outset of the revolution in France, they would not dare to draw the trigger, or push the bayonet against the preservers of their freedom and their liberty."

Is this, or is it not, gentlemen, a gross libel on the soldiery of this country? and can you believe that the man, who having boldly held forth the doctrine of the necessity of force; thus libellously insinuated, that all resistance would be rendered nugatory, because the spirit of the soldiery would not suffer them to act against the people, struggling in the cause of freedom: can you, I say, for a moment suppose that this man spoke from honest and patriotic motives, or from any other than those stated in the indictment?

On this occasion, it will be impossible for my learned friend to allege the usual palliations of seditious speeches, namely, that they were uttered in the warmth of passion, in the zeal of argument, or in consequence of provocation. They were the cool, deliberate, and unprovoked words of a man, who had received no injury, and to whom no crime was imputed; deliberately standing up, in a public manner, and proceeding without hindrance or molestation.

This customary plea, therefore, in palliations of inflammatory expressions, gentlemen, cannot apply in the present case.

Gentlemen, I would not, in the smallest degree, exert an undue influence over your judgment: if, after hearing the evidence which I shall adduce, and under all the circumstances of the case, you can believe that the defendant had no other intention than to enlighten the minds of the people, and instruct them in the nature of their just and legal rights; if you can believe, generally speaking, that his views were upright, whatever might be the doctrines he propagated (for, it is not the nature of the doctrine that you have to consider, as my lord will tell you) not whether a reform in parliament be necessary or desirable or not; this is not the question you are to determine; but whether he be guilty of the seditious intentions stated in the indictment.

If you are of opinion that his intentions were honest and patriotic, make him, by all means, every allowance for inadvertency of expression; nay, fling into the scale a few, excuse him if you can, and however mistaken he may be in his opinions, acquit him; for it would be wrong to affix that as a crime, which would be only an error in judgment. But if, on the contrary, you are of opinion, that instead of these honest and laudable intentions, he aimed only to inflame the minds of the people, and to excite them to acts of outrage, and to hatred and contempt of his majesty's person and government, and of our happy constitution, you cannot honestly discharge your duty

to God and your country, otherwise than by a firm verdict of conviction.

Gentlemen, I shall not trouble you with any more observations at present, but shall proceed to call the evidence.

EVIDENCE FOR THE PROSECUTION.

Joseph Mason *Gazet* sworn.—Examined by Mr. Coke.

You live at Birmingham?—I do.

Were you at Birmingham on the fifth of March, 1796?—I was.

Do you recollect going that evening to the Swan public house in Swallow-street?—Perfectly well.

At what hour?—Soon after eight.

Did you find any body there whom you knew?—Yes.

Name them.—I saw Mr. Benjamin Sutton, Mr. William Carver, and Mr. Richard Underhill.

When you came there what did you do?—I inquired of the landlady if Mr. Jones was to lecture there? she replied, No; but that—

[Here the witness was interrupted by defendant's counsel, and desired to relate nothing but what was said by or in hearing of the defendant.]

Whom else did you find there?—I found Mr. Binns, and a large party.

What do you mean by a large party?—About fifty or sixty persons.

What was Mr. Binns doing?—He was speaking; said he was delegated by the London Corresponding Society; that delegates had been sent to Portsmouth, and various other parts of the kingdom; I understood him that he had lately been at Portsmouth—he read some resolutions of the Portsmouth Corresponding Society.

What did he do afterwards?—He read a list of rules laid down for his instruction by the London Corresponding Society.

Did he read those rules from a printed or a written paper?—I cannot say.

How did he proceed afterwards?—He said he was not to swerve from his instructions; complained of the unequal representation of the people; said that Scotland sent 45 members to parliament, Cornwall as many; that the Cornish people had obtained those privileges by the spirit of resistance which they had formerly shown to their oppressors.

What farther did he say?—He recommended universal suffrage and annual parliaments; said that his majesty was aware that such were most conducive to the happiness of his subjects, as he had granted it to Corsica, though he withheld those rights from his natural subjects.

Before you proceed, tell us whether he named his majesty alone, or whether he added the name of any other person?—I cannot be certain.

What more did he say?—He begged leave

to quote from citizen Thomas Paine and said, "suppose a man, possessing a certain property, should be entitled to a vote, and that property consisted of a mule; if the mule die, the man loses his vote: so that the mule has the vote, and not the man:" by the same rule, a man possessing a house which entitled him to a vote, if he was deprived of the house, he lost his vote; therefore the man had not the vote, but the bricks and mortar—he said, that when Mr. Pitt had been applied to, on the subject of parliamentary reform, in time of war, he said the time was improper; when the same application was made in time of peace, he also said the time was improper; Mr. Binns observed, that when Mr. Pitt was in place, the time was improper; and when out of place the time was proper; he recommended them to use all the peaceable means in their power to obtain their ends, for that it was shocking to humanity to think of shedding the blood of their fellow-creatures.

Did he say what their ends were?—Universal suffrage, and annual parliaments.

I wish you would speak in the first person; not the effect, but the very words—say I—so and so.

[The witness, notwithstanding this intimation being twice given, continued to speak in the third person.]

But at the same time to be firm and determined—if their opponents continued obstinate—

Counsel.—Take the plan I have chalked out; thus—if your opposers.

[A conversation ensued between Mr. Romilly and the examining counsel on the impropriety of putting words into the witness's mouth—after some time the witness was suffered to proceed.]

If their opponents continued obstinate, and there should be a time when it may be necessary to use force, he hoped no citizen in the room would hesitate to shed the last drop of his blood, either in the field or on the scaffold—he said the lives of individuals were of little moment, when engaged in the cause of posterity—and that had our ancestors been fearful of laying down their lives for the public good, we should not have enjoyed many of the privileges which we do at this day. Though the blood might follow the axe, and stream down the block, it would sprinkle the earth, and a tree would arise whose branches would extend to future generations.—He spoke of the soldiers, and said, that though they were shut up in barracks, and deprived of the means of conversing with their fellow citizens, they were alive to the same feelings—that whether a man wore a brown coat, a black one, or a red one, his feelings were the same—and if they (meaning the soldiers) were called upon to fire on the people, like the soldiers that were ordered to fire upon the peo-

ple in the onset of the French revolution, they would not dare to draw the trigger, or push the bayonet against the preservers of their freedom and their liberty.

What else did he say?—He complained of the introduction of foreign troops into the kingdom: but I do not recollect much what he said concerning them.

Did he call the French soldiers by any particular name?—I do not recollect.

Where did you go to when you left the Swan?—To the Bell, in Suffolk-street, to find Mr. Jones.

[Here the witness was again desired to relate nothing but what passed in presence of the defendant.]

Joseph Mason *Guest* cross-examined by Mr. Romilly.

What is your profession?—I am a thread-maker.

Are you a person who are much in the habit of reading?—I do read, but not much.

Have you ever been in the habit of attending public meetings of any kind?—No.

Have you been in the habit of exercising your memory much?—I have a pretty good memory.

How many times did you peruse this speech before you got it by heart?—I have never learnt it by heart, I speak from recollection.

Did you take any notes?—Yes.

How long was it after the meeting when you made your notes?—About three or four days, as soon as I found my attendance would be necessary.

You say it was about three or four days; do you mean to speak with accuracy?—Yes; it was about three days. I was sent for on Saturday; I think the meeting was on Friday. I saw Mr. Hicks, when he came and dispersed the meeting where Mr. Jones was. Mr. Hicks called on me on the morning of the 12th, the very next day, and I went on the same morning to the public office.

What did you do at the public office?—Mr. Hicks desired I would relate what I had heard.

Was it taken down?—Yes; it was taken down in the forenoon, before dinner.

Why did you make notes?—I thought it necessary.

Have you the notes about you?—No; they are at home in my desk.

Were you at the last assizes?—I was.

Did you bring these notes with you then?—No.

Pray tell me, why you did not bring them?—I did not think they would be necessary.

What was your object in taking notes?—To refresh my memory.

Then you are now speaking from the notes you made, and not from recollection?—I speak from both.

How many times did you ever read your notes?—But once since the last assize.

Do you mean the Court should understand, the speech was delivered in the exact order you have given it?—Not exactly in the same order.

Did the parts immediately follow each other?—No.

Was mention made of the block before the soldiers?—No: I think it was after.

Were there any other parts of the speech delivered in a different order from what you have given?—There probably might.

Was the beginning the same?—I think it was.

But you have already told us the end was not?—I think he concluded with the blood sprinkling the earth.

What proportion of his whole speech have you given us?—I cannot tell.

Do you think it is half?—It is impossible to say.

Do you suppose it to be one-fourth?—Really I cannot say.

I think I need not ask you whether you are friendly or hostile to the doctrines which you heard?—Very hostile.

I take it for granted, if, in the course of Mr. Binns's speech, he had said anything more improper than you have stated, it must have made a very strong impression on you?—It certainly would.

You have told us of some resolutions of the London Corresponding Society—were they read?—They were.

Did you not say there were resolutions of the Portsmouth Society?—Yes.

Were there also read resolutions of the London Corresponding Society?—No; they were rules or instructions.

How many persons do you think were present at the meeting?—More than sixty.

Was it a large room?—It was not very large.

Have you been in the room since?—No.

Have you ever heard of the room having been measured, to try if it would hold fifty persons?—No.

Are you not a member of the Buck's lodge?—I am.

Pray did you ever there declare that you did not make minutes till eight or nine days after your deposition?—I do not recollect that I ever did.

Who were present at the meeting that you know?—There was a Mr. Dixon, of Digbeth.

Who else?—The two constables, Mr. Taylor and Mr. Atkins—and Mr. Wooldridge, keeper of the prison.

Were they before the magistrate?—Yes, they were.

Was their examination taken down?—I do not know.

Do you remember Mr. Atkins assisting your memory when you were giving your deposition?—No: I do not.

You were before the grand jury of course. Pray was Mr. Atkins examined?—I do not know; I was examined separately.

Do not you know that he was here on this very business the last assizes?—I know he was here, but I do not know what was his business.

In the course of this long speech which you have told us, did Mr. Binns recommend peaceable conduct?—Yes.

Once only, or more?—Only once.

Do you recollect any thing more?—He said something about the London Corresponding Society establishing a pamphlet, or magazine, to make their proceedings as public as possible.

What more?—He said it was not his wish to overturn the constitution, but to confirm it.

How did this business end?—When Mr. Binns had done speaking, the meeting broke up.

Did every body go away peaceably?—There was a song in praise of citizen Erskine, and trial by jury.

Was there no disturbance of any kind?—No: all was quiet.

I do not mean at the conclusion only, but at any other time?—I saw no disturbance.

Have you, as nearly as possible, stated the exact words?—I have.

Joseph Mason Guest re-examined by Mr. Coke.

You made your notes on the Monday following the meeting?—Yes.

And were examined on the Saturday?—I was.

You saw the two constables at the meeting?—Yes.

Did they stay the whole time?—No; I saw them go in and out.

At the conclusion of the meeting was another appointed?—Yes.

Benjamin Sutton, sworn.—Examined by Mr. Balguy.

Do you remember being at the Swan public house, on the 11th of March, 1796?—Perfectly well.

What time did you go?—Betwixt the hours of seven and eight.

Did you go alone, or in company?—I went with Mr. Guest, Mr. Carver, and Mr. Underhill.

Has any thing happened to Mr. Carver since?—He has been very unwell.

Did you see Mr. Binns?—He came in some time afterwards.

Was he in a room in that house?—He was; in company with other persons.

Who were those other persons?—I cannot say; they were sitting round two or three tables.

How many in number?—I cannot judge of their number; many came in afterwards.

Do you remember Mr. Binns beginning to discourse?—Yes.

How many were there in the room?—I cannot tell.

How many do you think at the fewest?—More than sixty I am convinced.

Tell us, as nearly as you can, what he said?—He said he was delegated by the London Corresponding Society, to form societies in the country to correspond with that in London; the mode of correspondence he should point out to a committee; that letters had been often intercepted and opened, which prevented a close co-operation, and frequent intercourse between the country societies, and that in London; that the society had furnished him with a set of instructions, from which he was in no wise to depart; for if he were, the society would not be accountable for his conduct; that as men differ respecting the forms of government, their object was to be obtained by every peaceable and legal means—

What object?—Universal suffrage and annual parliaments.

I am desired to ask you, whether you are speaking from what he said, or from his instructions?—It was in consequence of his instructions.

Proceed.—He said that his majesty and his ministers were aware that it was not inconsistent with the happiness of his people, as he had granted it to Corsica, though he had refused it to his natural subjects.

Mr. Justice *Ashurst*.—What do you understand was not inconsistent with the happiness of his people?—Annual parliaments, and universal suffrage, my lord.

Mr. Justice *Ashurst*.—Proceed.

Witness.—In the course of his speech, he inveighed against the introduction of foreign troops, it having been the custom of men, who were about to undermine the constitution to do it by means of mercenaries. Foreigners could not be supposed to have the same interest in the welfare of a country, as a native; and whether a man wore a red coat or a black one, he still had, among the people, his dearest connexions. Upon this principle it was, that the soldiers of France refused to push the bayonet or draw the trigger, against the people. On this account he reprobated the conduct of burying soldiers in barracks; he read from some pamphlet, which he said no one had dared to contradict, that a majority of the House of Commons was nominally returned by about 5,000 persons; but actually by a much less number, I think he said about 150; said that Cornwall returned as many members as Scotland, a privilege which they obtained by the spirit of resistance they had shown to their invaders. Charters, he said, were oppressive, inasmuch as they deprived one set of people of their rights to give them to another.

Did he say any thing of the means by which a change was to be brought about?—I understood it was to be brought about by peaceable means.

Did he say any thing about posterity?—He said it was a duty we owed to posterity;

but I cannot charge my memory with particulars.

Did you not say he spoke of the soldiers of France?—I understood it of them.

Did he distinguish them by any particular name?—I think he called them the National Guards.

National guards do you say?—Yes.

What did he say about the soldiery of this country?—That they would not push the bayonet or draw the trigger against the people; but I am not certain of these points.

Did he say any thing about barracks?—I think he did.

Benjamin Sutton cross-examined by Mr. Reader.

Of what trade are you, Mr. Sutton?—A button-maker.

Did not you say that Mr. Carver and Mr. Underhill accompanied you to the meeting?—Yes.

Did you say that Mr. Carver had been very unwell?—Yes; he has been deranged in his mind.

What is become of Mr. Underhill?—He is now at Birmingham; I saw him a few days ago.

Have you been in the habit of attending public speakers much?—Never, except a debating society there was some time ago at Birmingham.

Do you exercise your memory much?—Not much.

Do you go to church?—Sometimes.

Do you recollect as much of any discourse you have ever heard at church, as you do of this speech of Mr. Binns's?—I cannot say I do.

Did you and the last witness stand together?—I think we did.

What you heard it is most likely he heard also?—Yes.

And what he heard you must have heard also?—Certainly.

Pray what size was the room?—It was a small room.

A small room, do you say?—It was not a very large one.

Was it large enough to contain fifty persons?—Yes.

Would it contain sixty persons?—Yes, or more.

Pray how many would it contain, you say it was a small room?—I cannot say exactly.

Were the company sitting or standing?—When we went they were standing.

Did the majority sit or stand afterwards?—The majority were standing.

Was the room as full as it would hold?—It might have held more; but it was thronged.

Mr. Guest was with you the whole time?—He was.

You had each of you, therefore, the same opportunity of hearing?—To be sure.

You have repeated all that you heard?—All that I recollect.

If any thing else had been said more material, or as material, it must have struck you?—I did not go there for the purpose of giving information.

You did not go there for the purpose of giving information: I take it for granted you did not go with any great friendship for Mr. Binns, or for the doctrines you expected he would deliver?—I had no personal enmity to Mr. Binns.

But to his political opinions you were rather hostile?—I must own I was.

Do you know whether there was a society meeting at Birmingham before Mr. Binns came?—I never heard till then that there had been a meeting.

Pray, sir, did you take any notes in writing?—I did.

How long was it after the meeting before you made any notes in writing?—As soon as I knew it was likely I might be called upon.

How long after was it?—I cannot exactly tell.

Be so good as to speak to the best of your recollection?—I really cannot tell.

Was it a month afterwards?—It was not a month.

And you had not till then taken any notes?—Not till then.

I understand you it was nearly a month before you made your notes. Now are you certain, at this distance of time, that he made use of the words, "his majesty and his ministers?"—Yes, I am.

Did he not say his majesty alone?—To the best of my knowledge he said his majesty and his ministers.

Mr. Sutton, I am not attacking your reputation; but do you mean to swear that he said his majesty and his ministers?—To the best of my recollection he said so.

You will not, therefore, take upon you to swear that he did not confine it to his majesty alone?—I cannot swear that.

You have spoken of a pamphlet; pray do you know whether it was one published by the Friends of the People?—I cannot say.

Benjamin Sutton re-examined by Mr. Balguy.

You say it might be a month after the meeting when you made your notes?—Not a month.

You have said that you were in a situation where you could hear the very words?—I was.

Though you have given us all you know to the best of your recollection, you do not mean to say, that another might not recollect more?—No; certainly not.

DEFENCE.

Mr. Romilly.—My Lord and Gentlemen of the Jury;—In this case you will observe, that not only has the evidence which you have heard varied as to the words contained in all the counts of the indictment, but the

witnesses themselves have varied materially from each other. In the first place, the defendant is charged in the indictment with having said, "that his majesty and his ministers are well convinced that annual parliaments and universal suffrage are most conducive to the happiness of his people, and have granted it to Corsica, though he has withheld that right from his natural subjects." Two witnesses have been called to prove these words.—In the first place, Mr. Guest says, that the words spoken were, that his majesty was aware (not coupling the name of any other person with that of his majesty, although his majesty and his ministers are the words laid in the indictment) that such was most conducive to the happiness of his subjects;—this is very different from what is stated in the indictment: but the evidence of the other witness, Mr. Sutton, is totally different: for instead of saying that it is most conducive to the happiness of his people, he says, it is not inconsistent with the happiness of his people. Now there is a great difference between these expressions; for there is certainly no crime in withholding from his people, that which is not inconsistent with their happiness; for though it be not inconsistent, it may not be absolutely necessary for their happiness. And there certainly is a most material difference in not granting that which is necessary; from withholding that which is not inconsistent. Thus you observe, gentlemen, that neither of the witnesses swear to the words in the indictment; and both materially contradict each other: these words contained in the second count of the indictment, therefore, are not proved.

I proceed, gentlemen, to notice the words contained in the third count. "Our object is, to obtain it by every peaceable means in our power, for it would be shocking to humanity to shed the blood of our fellow creature; but if they continue obstinate, and there should be a time when force is necessary to be used, I hope there is not a citizen in the room but would shed his last drop of blood, either in the field or on the scaffold."

Gentlemen, only one of the witnesses attempts to prove these words, it is Mr. Guest, and he says, that the words were, if their opponents continued obstinate, and so forth; these, gentlemen, are the very words. The witness says, he recommended them to use all the peaceable means in their power; but if their opponents continued obstinate, and there should be a time when force is necessary to be used, and so forth.

I think, gentlemen, I need not tell you, that these words are very different from those stated in the indictment, and will bear a very different meaning. You will be told, perhaps, by my learned friend, that they are the same in effect; but this is not to the purpose. You, gentlemen, are only to judge of the words, and not what effect they might possibly produce; surely it is hardly necessary

to say this, at this time of day. Their opponents might not mean his majesty and his ministers—it might mean any other opponents to legal and constitutional measures: and with respect to what is contained additional in the first count, it can only be considered as forming part of an abstract proposition, which can have no particular application to the present case. The exact words of the witness are, that had our ancestors been fearful of laying down their lives for the public good, we should not have enjoyed many of the privileges we do at this day. "Though the blood might follow the axe, and stream down the block, it would sprinkle the earth, and a tree would arise whose branches would extend to future generations." You see, gentlemen, that in this connexion the words contained exclusively in the first count of the indictment, only form a part of an abstract proposition, which has no immediate reference to any particular case; and therefore, gentlemen, from these considerations, I take upon me to say, that the charge contained in the third count of the indictment also is not proved.

I now come, gentlemen, to the fourth and last count; the words here are—"If the soldiers were called upon to act against you, like the national guards, who were called upon to fire on the people in the outset of the revolution in France, they would not dare to draw the trigger, or push the bayonet against the preservers of their freedom and their liberty."

The words of the first witness are—if they (the soldiers) were called upon to fire on the people, like the soldiers that were ordered to fire upon the people in the onset of the French revolution, they would not dare to draw the trigger, and so forth.

Here we have three variations—onset instead of outset; soldiers instead of national guards; and fire upon instead of act against. Now there is a great deal of difference in these terms, and they can never be used with any propriety the one for the other: the national guards of France were very different from the soldiery, and were a kind of national militia, created for the purpose of supporting the revolution: no soldiery, bearing such a name, had any existence in France before the revolution. Onset means an attack, an assault; and had this word been used in the indictment, it must have been accompanied with an innuendo, which we do not find there. You will therefore observe, gentlemen, that the evidence of this witness is by no means conclusive.

Mr. Sutton, the second witness, has proved nothing at all, except that he made use of the words "national guards;" stating that something had passed in France, without any allusion to any thing in this country; though my learned friend put that question to him, which the witness could not answer. I submit it to your lordship; after the crown evidence have thus varied from each other, and both of them from the indictment, whether

there is evidence sufficient to refer this case to the gentlemen of the jury.

Mr. Justice Ashurst.—I should be glad to hear what the counsel for the prosecution have to state in reply.

The Honourable Spencer Perceval.—My Lord, and Gentlemen of the Jury.—My learned friend has been endeavouring to establish a mode of proof, which would make it absolutely impossible ever to obtain conviction—That if there be the slightest error in recollection, the smallest slip, the most trivial variation in words, it shall not amount to a legal proof—but, gentlemen, it is not necessary, as my learned friend well knows, to prove every word; it is sufficient if enough be proved to enable the jury to form a judgment, as to the guilt or innocence of the defendant; and upon this ground I am ready to meet my learned friend.

And in the first place, with respect to the matter contained in the second count:—the first thing to be noticed is the witness's leaving out the word ministers, omitting to speak distinctly of his majesty and his ministers, and saying it was his majesty alone:—the next variation is aware; instead of being well convinced. Gentlemen you will observe that what is defective in one witness, is supplied by the other; and this ought to be satisfactory, even were the variations more material. Can it be doubted that the words aware, and well convinced, in this connexion, mean exactly the same thing?

Again; the people, and his subjects, are words importing exactly the same thing in this connexion. The same argument will apply to the expressions, most conducive, and not inconsistent; the difference is not material.

With respect to the third count, the only question is whether their opponents, which are the words used by the witness, mean his majesty and his ministers: my learned friend here speaks with great confidence, and says, they may signify any other opponents to legal and constitutional measures; but in this connexion it is impossible to put any such construction upon them, and if they mean any thing at all, they must mean his majesty and his ministers:—You will observe, gentlemen, the witness has sworn that the defendant spoke of a reform in parliament, of universal suffrage, and annual parliaments, as the basis of this reform; that his majesty was aware that such was most conducive to the happiness of his subjects, and that all peaceable means were to be made use of to obtain this end; but if they continue obstinate—who? who continue obstinate? can it mean any thing else than his majesty and his ministers? I am sure, gentlemen, I need say no more: and do not scruple to affirm, that this count (the third) is sufficiently proved, both in substance and import.

I come now to the fourth count:—if the soldiers were called upon to act against you,

and so forth. Here the only variation is that the word soldiers is used by the witness, instead of national guards; and the phrase fire upon, is used instead of act against them. Is it possible, gentlemen, you can attach any weight to objections made on such grounds?

A great deal has been said by my learned friend, to prove that national guards are very different from soldiers, and that onset is a different word from outset;—you will observe, gentlemen, that the first witness used the word soldiers; but Mr. Sutton, the other witness, thinks the words were national guards. As to *onset* and *outset*, I think it totally unnecessary to trouble you farther; and shall leave it to your decision.

Mr. Romilly.—My Lord, and Gentlemen of the Jury. I shall take up little of your time in answering the objections of my learned friend. He has shown you what dangerous consequences would follow if prosecutors were to be bound up too strictly to truth. I am sure there have been causes enow of this nature of late, and certain it is, there never has been a cause of this kind come before the courts, wherein this objection has not been urged.

It has been stated to you, gentlemen, that in the variations which I pointed out to your notice, most of the words are nearly synonymous. My learned friend well knows, that if this man should have the hard fortune to be convicted, which I hope and believe he will not, the Court of King's-bench would be called upon to inflict the severest punishment which the laws have put in its power; and your lordship, sitting in the court of King's-bench, well knows, that you would be told, in express terms, that this man had the impudence to say so and so. Your lordship would not be called upon to pass sentence according to the evidence which had been adduced, but according to the words which are to be found on the records of that court (in the present cause), it being presumed that the words on the record, and those only, were or could be the words which the defendant could be found guilty of having uttered; and these words would be rung in your lordship's ear, as the most daring and inflammatory which could possibly have been delivered. You have been told that opponents in this case means exactly the same thing as the king and his ministers, and it will be said, in express terms, that he hoped there was not a citizen in the room but would be willing to shed his last drop of blood in resisting the attempts of the king and his ministers. But will any one say that the words, "their opponents," must necessarily mean the king and his ministers? or can any person of common sense for a moment believe that it can possibly mean them?

The next variation is with respect to the words subjects and people. In this place the word may be applied as an abstract term to people in general; and may also be applied, with equal propriety, to the people of any other country, as to the people of England.

With respect to the fourth count, I beg leave to repeat the words of the first witness; and as to the second, he does not attempt to prove any thing: The words of the first are—that whether a man wore a brown coat, a black one, or a red one, his feelings were the same; and if they were called upon to fire on the people, like the soldiers that were ordered to fire upon the people in the onset of the French revolution, they would not dare, and so forth: now, is there no difference between these words, and those contained in the indictment? must they necessarily, or can they possibly be tortured to mean the same thing? Your lordship observes, that what goes before is not soldiers, but "whether a man wears a black coat, a brown coat, or a red one." *They* is a relative term which may relate to any citizen of a state, of what profession soever he be; and this sense ought to be put upon the words as most obvious and natural. It is true, as my learned friend argues, that the question is not whether the words be literally proved; but I contend that neither the substance nor the import of the words have been proved; and nothing can be more dangerous than the doctrine which has been advanced by my learned friend, and the precedent which he wishes to establish.

Mr. Justice Ashhurst conceiving that the counsel wished to rest the merits of the case on what had already been advanced, was proceeding to address the jury, when he was interrupted by

Mr. Romilly.—If your lordship thinks there is any thing for the jury to decide, I mean to address them.

Mr. Justice Ashhurst.—I shall certainly refer it to the jury: by the late act of parliament, they are the judges of the meaning as well as the fact.

Mr. Romilly.—My lord; I submit it to your lordship with great deference, that, that act of parliament relates only to libels. Libel is the word every where made use of.

Mr. Justice Ashhurst.—This is a libel.

Mr. Romilly.—No, my lord, this is an indictment for words charged to have been spoken, which is a material difference.

Mr. Justice Ashhurst.—Make your speech, I shall then address the jury.

Mr. Romilly.—Your lordship, then, thinks there is no force in the legal objection?

Mr. Justice Ashhurst.—If the words proved, are the same in meaning, though not the precise words charged, the jury must decide.

Mr. Romilly.—Gentlemen of the Jury. If this cause were to be decided by party spirit, or prejudice, it would be to little purpose to set up any defence; but I have not the least doubt, gentlemen, but that you will discharge from your minds every thing like party spirit, and as much as in your power lies, divest yourselves of any prejudices which you may have imbibed against the defendant; and I have no doubt but your decision will be what it ought to be: and when I consider upon what

flimsy testimony the charges rest, and recollect what substantial evidence I might adduce on the part of the defendant, I am convinced, gentlemen, whatever may be your dispositions, and however prejudiced against the defendant (which I dare say is not the case) when you have maturely weighed in your own minds the whole of the evidence, I am convinced, I say, that you cannot honestly discharge your duty before God, and your country, unless you find a verdict for the defendant.

In what I have to say to you, I shall not endeavour to inflame your passions, or bias your judgment; but shall confine myself strictly to the evidence. I shall not endeavour to prove that the doctrines to be found in the indictment, is any thing like genuine patriotism. Mr. Binns has not instructed me to defend those doctrines. What I am (to prove, and what I hope to prove before I have done is, that neither the words, nor the substance of what is stated in the indictment, were spoken by the defendant, in the manner or with the intention there stated.

You might observe, gentlemen, that I did not press the witness* much in my cross examination; but I think I can prove that he has not spoken the truth, but that he is perjured; and this I can prove from his own evidence alone.

He has repeated to you what he heard in the course of a very long speech: and he does not pretend to deny that there are frequent chasms, that he gives you only detached parts: he does not undertake to prove that they followed one another, or that they were spoken in the same order. When I asked him whether he had learnt what he had to say by heart, my object was to know whether he had been instructed, or had spoken from recollection. I should have been extremely glad to have seen his notes; for it is plain that the contents of the paper that has been put into his hands, constitutes his evidence, and not what he recollects. It appears he has been extremely careful to preserve his notes, but has not brought them on the only material occasion; and you see, gentlemen, that this was not done accidentally, but on purpose, for he told us that he did not bring them to the last assize. So that you perceive, gentlemen, he invariably leaves his notes at home, whenever there is a probability of their being called for.

I shall prove, gentlemen that he is perjured and that he speaks from the paper, and not from his recollection. There is a material proof of this in mistaking the word *onset* for *outset*; it is impossible, gentlemen, for a man to have fallen into this mistake, but in consequence of learning by heart: and in reading or recollecting what he had read it is very easy for him to mistake the word *onset* for *outset*, or *outset* for *onset*. He now swears positively that the word was *onset*: and this is

demonstration to my learned friend; but I ask how came the word *outset* into the indictment, which was evidently drawn from the testimony of this witness.

Mr. Justice Ashurst.—Is it *onset* in the indictment!

Mr. Romilly.—No, my lord *outset*. I shall say something on the learned judge's having left it to you to decide, whether the words are in substance the same; but I shall not do it at this moment.

There are only two witnesses which are produced on the part of the prosecution. Mr. Underhill was present, but he is not called; and there can be no other reason why he is not called, but that he would have disproved what the others have sworn; for if the prosecutors have been at the trouble to bring to the assizes a madman, in order to see whether he would have any lucid interval, in which to give evidence, certain it is, they would have brought Mr. Underhill, a man who is in his senses, if he could have proved any thing; and a man whom they might easily have procured (if they had wished) as one of the crown evidence acknowledges he saw him in Birmingham a few days ago. There were also other persons who might have been brought here to give evidence. Mr. Wooldridge, the keeper of the prison, and Mr. Taylor and Mr. Atkins, the two constables were present. It must be granted, that these would have been, on many accounts very proper persons. Mr. Wooldridge I saw this morning myself in court, and he must have been, extremely proud, to have been called, on this occasion, to prove his loyalty; and why he is not, I can give no other reason than what I just now stated; namely, that he could prove nothing to criminate the defendant.

You will observe, gentlemen, that in asking the number of the company present, as falling within the late act, I did it only to show that the room could not possibly contain that number; because our cause, in some measure, depends upon discrediting the crown witnesses.

With regard to the notes of Mr. Sutton, they would have been of no use because they were made at too great a length of time after the meeting.

Gentlemen, you have, doubtless, paid particular attention to what has been said respecting the variations in the evidence and the indictment. Let me ask you, gentlemen, whether you can possibly think the words *aware*, and *well-convinced*, mean the same thing?—but you must say that they mean the same thing, or you cannot convict the defendant:—you must also say that *not inconsistent* and *most conducive*, mean the same thing; and as my learned friend would have you, you must also say that *onset* and *outset* mean the same thing; and you must say that *soldiers* and *national guards* mean exactly the same thing. If the first witness speaks truth, the last does not; and if the last speaks truth

* Joseph Mason Guest.

the first does not. Gentlemen, if on this evidence you convict the defendant, no man will be safe. One man may say this—and another may say that—it may be carried, by some informer, to the treasury, and both may be convicted on the evidence of words totally different from what they had delivered. The prosecutor acts without restraint—he endeavours to extenuate now, by-and-by it will be his interest to strengthen—and gentlemen, if on such evidence as has been adduced, you convict the defendant, it will be most dangerous for a person to use any expression, which has the slightest allusion to public affairs.

If, after all, these variations are only the result of accident, I must say it is a very singular accident. As to the expressions relative to Corsica, I would here just observe, that there may be no crime in withholding that from one country, which is granted to another; for it might happen to suit the interests of one country, and not of the other. There is a material difference, gentlemen, between establishing a constitution for a state, which for the first time comes under your dominion, and making alterations in a constitution which has been long settled. Government might, therefore, withhold this privilege, and yet be entitled to veneration.

I now proceed to notice the words sworn to by the witness, relative to the third count.

"But if their opponents continue obstinate," and so forth.

Now there are two ways of explaining this passage—he might mean literally what he said, which I do most firmly believe—the other sense is that gentlemen, which my learned friend puts upon them; and here let me complain, that he has said so little at the opening of this prosecution, doubtless it is, because he has reserved himself for a reply, when he knows I can have no opportunity to answer him.

But in whatever sense the expression might have been used, the principle must in its own nature be good: observe, gentlemen, the arguments of the learned special pleader, do you suppose it possible that a man can be always mistaken? You are to consider, gentlemen, whether the word opponents in this place, could mean the king and his ministers; or whether it might not possibly mean that a large party in this country, who oppose, with violence, even the most legal associations, when they are associated for the purpose of obtaining a parliamentary reform—that party whose prejudices prevent them from doing justice to the opinions of others, when they differ from those which they themselves profess.

I need not tell you, gentlemen, that Birmingham is a place where violence has been known and felt; where the most wanton and flagrant breaches of the public tranquillity have been committed, under the influence of blind prejudice, inflamed by the artful and the interested: where innocence and virtue

have been injured, under the mask of an attachment to the government.

You are now in your consciences to say, that because a man has been talking of the king and his ministers, all that is stated by the witness to have been said alluded to the king and his ministers—if there is one of you, gentlemen, who can sleep in his bed after saying this—if disconnected sentences are thus to be dragged out for proof, you must suppress all public conversation. For God's sake, though we are slaves, let us not be intentionally so!

I proceed to the fourth count. I am tired, gentlemen, of repeating to you the words—no man in this country can be so ignorant as not to know the difference between soldiers and national guards—and as to *onset* and *outset*, I leave it to you to decide. Enough has been said.

[Here Mr. Romilly consulted with Mr. Binns for a few minutes, and then proceeded.]

Gentlemen, were I to exercise my own judgment, I should rest my defence here. I think it setting a bad precedent, to examine a single witness on the part of the defendant; but he is not satisfied to obtain a verdict of acquittal on the contradictions of the crown evidence, but desires (I speak it to his honor) to be acquitted solely on the merits of his cause, the justice of his principles, and the purity of his intentions. He desires me to repeat exactly what he has said; I shall therefore call all the witnesses. I shall not do what has been done by the other side—their object is to obtain a conviction. Gentlemen, the question is not whether Mr. Binns was a delegate from a London Corresponding Society; much less are you to decide what are, or may have been, Mr. Pitt's sentiments respecting a reform in parliament; neither are you to find whether Mr. Binns said any thing about establishing societies: those are none of them the questions which you are to determine—though, for the purpose of confounding your judgments, those passages have been introduced; but I am persuaded that there is no person among you, who can suffer himself to be influenced by any artifices of this nature.

Gentlemen, you are to decide on this point—whether there is not something totally different from what has been mentioned. The whole depends on the three last counts. The second is respecting Corsica; I think I need say no more on this head. You have observed, gentlemen, that neither of the witnesses prove the words of the indictment, and both differ from each other. The third count relates to the time when force may be necessary to be used; and the fourth refers to the conduct of the soldiery in a supposable case. Now, gentlemen, unless you can believe that the defendant told the people that it was necessary to use force to obtain a reform in parliament, you cannot convict him.

I am instructed to say that Mr. Binns did certainly talk about force; but he did not talk about it as a thing applicable to the obtaining a parliamentary reform. Our learned friend would have us divest ourselves of all knowledge, but what is to be found in the indictment. Let us, gentlemen, for a moment examine what was the period at which this discourse was delivered: it was at a time when the doctrine of resistance to oppression had been pretty much discussed, both in parliament and out of parliament;—whether it was prudent or not to act as Mr. Binns did, is not the question; it is *his intention* you are to decide upon; but I must say I do not wish to live to see the time when we may be debarred the right of conversing on public affairs, and discussing the measures of government: and I trust in God I never shall live to see the day, when subjects debated in parliament may not be spoken of out of parliament.

Mr. Binns made, as you have been given to understand, a very long speech: he endeavoured to impress on his hearers, in a forcible manner, the necessity of using peaceable means—peaceable and legal means, and no other—as the only ones that were likely to obtain their end. After he had spoken a considerable length of time on the necessity of a reform in parliament, and of universal suffrage and annual parliaments, as the only radical one, he passed to other topics—he talked to them upon those subjects which are, and I hope always will be most interesting to Englishmen—the trial by jury, and the liberty of the press. It is impossible I should, while defending my client, be led to commit the very crime of which I am engaged to prove him innocent. God forbid! that standing in the situation in which I do, I should interest myself in a bad cause; but though I say this, I should disgrace the profession of which I have the honour to be a member, if through any motives of prudence, or timidity, I should omit to state any circumstances which are material in the defence.

After Mr. Binns had talked a considerable time of the trial by jury, and the liberty of the press, he certainly did say, that if a time should come when these, the dearest rights of Englishmen, were taken away, he, for one, would not scruple to sacrifice his life for the interest of posterity. I am astonished that my learned friend should treat this as a false philosophy. I must say, that I profess it; I will say more, I am sure that my learned friend himself professes it, and if necessity should call upon him, would practically prove that he does profess it. My learned friend must admit, that there have been circumstances, in the history of this country, which have called forth the exercise of this virtue; and if my learned friend had lived in the time of Charles the first, or in the time of James the second, he himself would have acted under the influence of this principle, which he now calls monstrous, and false philosophy. I am

sure he has too much honour, too much patriotism, not to have been found in the foremost rank, opposing that wicked monarch.

Gentlemen, I shall not cite passages out of great authors, such as Locke, the justness of whose political opinions have been sometimes called in question; but I shall beg leave to cite to you the words of one of the learned judges who presided in our courts, and whose knowledge of our constitution is universally acknowledged. I shall quote judge Blackstone.

“From the Revolution in 1688 to the present time.

“In this period many laws have passed; as the Bill of Rights, the Toleration Act, the Act of Settlement with its conditions, the Act for uniting England with Scotland, and some others; which have asserted our liberties in more clear and emphatical terms; have regulated the succession of the crown by parliament, as the exigencies of religious and civil freedom required; have confirmed, and exemplified, the doctrine of resistance, when the executive magistrate endeavours to subvert the constitution; have maintained the superiority of the laws above the king; by pronouncing his dispensing power to be illegal; have indulged tender consciences with every religious liberty, consistent with the safety of the state: have established triennial, since turned into septennial, elections of members to serve in parliament; have excluded certain officers from the House of Commons: have restrained the king's pardon from obstructing parliamentary impeachments: have imparted to all the lords an equal right of trying their fellow peers; have regulated trials for high treason; have afforded our posterity a hope that corruption of blood may one day be abolished and forgotten: have (by the desire of his present majesty) set bounds to the civil list, and placed the administration of that revenue in hands that are accountable to parliament; and have (by the like desire) made the judges completely independent of the king, his ministers, and his successors.”

Gentlemen, I shall trouble you with only one quotation more, which shall be from the same authority.

“The antiquity and excellence of this trial” (speaking of trial by jury) “for the settling of civil property, has before been explained at large. And it will hold much stronger in criminal cases; since, in times of difficulty and danger, more is to be apprehended from the violence and partiality of judges appointed by the crown, in suits between the king and the subject, than in disputes between one individual and another, to settle the metes and boundaries of private property. Our law has therefore wisely placed this strong and two-fold barrier of a presentment, and a trial by jury, between the liberties of the people, and the prerogative of

the crown. It was necessary for preserving the admirable balance of our constitution to vest the executive power of the laws in the prince: and yet this power might be dangerous and destructive to that very constitution, if exerted without check or control, by justices of oyer and terminer occasionally named by the crown; who might then, as in France or Turkey, imprison, dispatch, or exile any man that was obnoxious to the government, by an instant declaration, that such is their will and pleasure”

“So that the liberties of England cannot but subsist so long as this palladium, remains sacred and inviolate not only from all open attacks (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it, by introducing new and arbitrary methods of trial by justices of the peace, commissioners of the revenue, and courts of conscience.”

Now, gentlemen, I shall prove to you by the witnesses I have mentioned (many of whom are housekeepers, and not members of any political club) that though he talked of resistance, it related to the defence of Trial by Jury, and the Liberty of the Press only.

My learned friend will tell you, perhaps, that there was no occasion to talk in this manner—that neither the trial by jury, nor the liberty of the press, were in danger; and that, therefore, his talking was criminal, as tending to excite undue fears and suspicions in the minds of the people; but, gentlemen, though you be of opinion that neither the one nor the other of these inestimable privileges were in danger, and though you be of opinion that in talking of them in this manner the defendant was committing a crime, you cannot find him guilty of this indictment: for even supposing all this to be true, it must be the subject of another indictment. The question is not, gentlemen, whether the trial by jury, and the liberty of the press, was actually endangered, or whether Mr. Binns thought so; but the question for your decision is, whether Mr. Binns recommended force to be employed to obtain a parliamentary reform; and, gentlemen, unless you are of opinion that he did, you cannot convict him;—but if, on the other hand, he was only contending for the right of trial by jury, and the liberty of the press, so far from being criminal, he was acting the part of a good citizen and an honest man; and he is neither a good citizen nor an honest man, who, in such a case, would act otherwise.

Gentlemen, both the witnesses for the prosecution have said, that the words they have given in evidence, are disconnected sentences: it is impossible to convict a man on such evidence—the same expressions taken in a different order, may mean quite contrary things—but in this detached and disjointed state, it is impossible to develop their meaning, or to discover whether they have any meaning at

all: and therefore, though in all these cases, he might have used the words stated by the witness (which however has not been proved) it is impossible to say what was their original import.

Gentlemen, if this were a case in which you were to decide, after hearing one side only, I think you could find no difficulty; but when you have heard the evidence which I shall call, you will be convinced that the innocence of the defendant is as clearly proved as the nature of the circumstances will possibly admit.

Gentlemen, I do not believe that the witnesses I shall call have taken any notes, I do not think they have—I do not scruple to say, that they are men of honest characters, in every respect worthy your credit; most of them housekeepers—not members of political clubs, or immediately connected with Mr. Binns.

Gentlemen, the defendant, I must say, is acting in the most fair, open, and honourable manner, by giving the prosecutors an opportunity of cross-examining his witnesses; and by submitting the whole of his conduct to the severest scrutiny.

Gentlemen, this is all I will trouble you with: I am certain that in your hands the defendant is perfectly safe.

George Fenton sworn.—Examined by Mr. Romilly.

Where do you live?—In Pritchit-street, Birmingham.

What are you?—A schoolmaster.

Were you at the meeting at the Swan public house, on the 11th of March?—I was.

Were you there before Mr. Binns came?—Yes.

How near were you to Mr. Binns?—Pretty near.

Did you hear all that he said?—I did, for I sat upon a little elevated bench.

Tell us what was the first subject of his discourse?—Parliamentary reform.

What was the first thing done?—A paper was read.

What was it?—It appeared to me for the purpose of introducing Mr. Binns to the societies in Birmingham.

Are you a member of any society?—I am not.

What was done next?—He said, that in his opinion, the only radical reform was universal suffrage and annual parliaments.

He stated that to be his own opinion?—He did.

What did he say next?—He said that he was well convinced that universal suffrage and annual parliaments were most conducive to the happiness of the people.

Did he say that his majesty or his ministers were well convinced of it?—No; I am certain his words were, that he was well convinced that universal suffrage and annual parliaments were most conducive to the happiness of the people.

Do you think that if he had said his majesty and his ministers, that it could have escaped your recollection?—No.

What did he say farther?—He thought no person could doubt of the practicability of it, when he recollected that universal suffrage had been granted to Corsica by his present majesty, as one of the conditions by which he was acknowledged king of Corsica.

Did he also say that some of the states of North America enjoyed it?—Yes.

And thence argued the practicability of it?—He did.

Did he go on to say that his majesty, or his majesty's ministers, withheld that right from his own natural subjects?—No; he did not.

After he had finished the subject of universal suffrage and annual parliaments, what did he do next?—He made some observations on the two bills which had lately passed the House of Commons.

Did he point out any way to obtain this reform?—Yes; by petitioning the king and parliament.

What did he say concerning the two bills you have mentioned?—That those bills did not prevent people from meeting to the number of fifty.

What more?—He said, if they met they need not fear the information of spies, so long as they had a trial by jury, even under the restrictions of those bills; and that England would never be enslaved so long as it has a trial by jury, and the liberty of the press.

What more?—But if, unhappily, there should be a time when the trial by jury, and the liberty of the press, should be taken away from the people, though it would be shocking to humanity to shed the blood of our fellow creatures; yet, under such circumstances, he hoped there was not a citizen in that room who would not be willing to shed the last drop of his blood, either in the field or on the scaffold.

That expression was used on the supposition of the liberty of the press, and the trial by jury, being taken away?—It was.

Was it used upon the supposition of a refusal of a parliamentary reform?—No; Mr. Binns never said that force was justifiable to obtain a reform in parliament.

During the whole of his speech did he recommend peaceable measures?—He said we should never hope to obtain a reform by any other means.

You are not a member of any society?—No.

Were you a friend of Mr. Binns?—I never saw him before.

Were you ever at any meeting, either before or since?—Neither before nor since.

George Fenton cross-examined by Mr. *Perceval*.

Have you been in the habit of attending public meetings?—No.

A question has been put to another witness, and I shall put it to you: do you recollect as much of any sermon you have ever heard, as you do of this speech?—No, I cannot say I do; because after some time, when I saw in the papers that Mr. Binns was apprehended, and I understood I should be subpoenaed upon this business, I thought it my duty to keep it in memory as well as I could.

After what length of time did you expect to be called as a witness?—Not for some months; not till Mr. Binns had obtained a copy of his indictment.

Had you a copy?—Yes; Mr. Binns called and delivered it.

Had you told any body of any thing that was done or said at the meeting?—Yes; I might have told several.

Did you make any memorandums?—I did that night.

Why did you make them?—To refresh my memory.

It was not upon Mr. Binns' being committed that your memory was refreshed?—It was on both occasions.

You made memorandums the first night?—Yes.

Have you got them about you?—No.

Why did you not bring them?—I did not think it would be necessary.

Were they notes of what you did or of what you did not hear?—Of what I did hear.

You did not note the words "his majesty and his ministers were well convinced," and so forth?—I did not hear them.

You do recollect that he said he was well convinced?—Yes, I do.

Were the words most conducive, or not inconsistent?—Most conducive.

Do you recollect these words: "It would be shocking to humanity to shed the blood of our fellow creatures?"—Yes, I do.

Were the words used, "to shed," or "to think of shedding?"—The words, I think, were, "shocking to humanity to shed the blood of our fellow creatures."

Had you told Mr. Binns what you knew, before he brought the indictment?—No.

He gave you the indictment?—He left it at my house.

Did he read it over to you?—No, he did not.

Did he make a long stay at your house?—He did not wait at all.

Did you read over the indictment attentively?—Yes, many times.

Had he not the curiosity to ask you any questions as to the words?—No, he had not.

Pray what was it that he said to you?—He said he had brought me a copy of the indictment, as it was his intention to subpoena me; and requested I would recollect as much as possible of the discourse which he had delivered on the 11th of March.

Did he say any thing at the meeting respecting the soldiery?—He said, he did not recollect a single instance, either in ancient

or modern history, wherein the native soldiers of a country had been made to fire on their countrymen, when defending their common rights; he then instanced the conduct of the National Guards of France.

You are sure he did not say the French soldiers?—He said, if the soldiers were called upon to act against the people, when defending their rights, they would not dare to push the bayonet or draw the trigger against the preservers of their freedom.

Do you recollect any thing about not thinking much of your own lives, for you are engaged in the cause of posterity?—I cannot tell the particulars; there may have been something of that kind.

But you will not swear that these words were not spoken?—I do not recollect them.

Or of blood following the axe?—No.

You say he read some letters and papers?—He did.

Can you give us any of the instructions?—The instructions were only rules laid down for his conduct, and for the regulation of the societies; but as I had no intention of going into the society, I did not pay much attention to them.

How long were they being read?—I cannot say.

Cannot you recollect any passage from the instructions?—I cannot.

Should you recollect any passage were it read to you?—Possibly I might.

Can you recollect this [reads]—"This part of your mission effected, you are to strain every power of your mind to awaken the sleeping spirit of liberty; you are to call upon your fellow citizens to be ready, with us, to pursue our common object, if it must be to the scaffold, or rather (if our enemies are desperate enough to bar up every avenue to inquiry and discussion) to the field, at the hazard of extermination; convinced that no temper less decided than this will suffice to regain liberty from a bold usurping faction?"—I do not recollect that.

Will you swear these were not part of the words read?—No.

You mean to say that these may have been read, though you cannot recollect them?—Possibly.

Did you make acquaintance with Mr. Binns at this meeting?—No.

When did you see him the first time afterwards?—I cannot tell.

Recollect?—I cannot tell; I kept no account.

Was it some weeks, or months, before you saw him again?—I cannot take upon me to say.

How many times had you seen him before he brought you the indictment?—I had seen him several times in public, but not to speak to him.

When he did call, tell us what passed?—He said, he had heard that I was at the meeting, and therefore when he obtained a copy

of the indictment he would furnish me with it. He gave me notice that he should subpoena me.

Did he inquire into the state of your recollection?—Not at all: when he first called it was on Sunday, and I was going to church.

Was that the cause why he did not stay?—Perhaps it was.

George Fenton re-examined by *Mr. Romilly*.

You told him you had been at the meeting?—I did.

He did not ask you what you recollected?—No.

You say he came to you with a copy of the indictment, but did not ask you any questions?—That is what I mean.

Did it serve to refresh your memory?—Yes, it did; I was convinced immediately on seeing it that the words contained in it, were not spoken by Mr. Binns.

With respect to the instructions, you say you do not recollect much, because having no intention of becoming a member of a society, you paid but little attention?—Exactly so.

Edward Porter sworn.—Examined by *Mr. Romilly*.

Where do you live?—In Birmingham.

What are you?—A button-maker.

Are you a house-keeper?—Yes.

In what street do you live?—In St. Paul's square.

Were you at the meeting at the Swan public-house, in Swallow-street, on the 11th of March?—I was.

Did you see the defendant there?—I did.

Was he in the room when you went?—No, he came in soon after.

Did you hear him speak?—Yes.

What did he say?—After reading some papers to which I paid but little attention, he began to speak.

How happened it that you paid but little attention to what he read?—Because I was then engaged in conversation.

Are you a member of any political society?—No.

What did he speak of when he began?—Of universal suffrage and annual parliaments, as the only radical reform.

Did he say any thing about the means by which it was to be obtained?—Yes; he spoke of petitioning.

Did he say any thing of any other means?—No, he did not.

Did you hear the whole of his speech?—I did.

Did he say any thing of obtaining a reform by force?—I aver that he said no such thing; I am confident of it.

Whence arises your confidence?—I paid particular attention. I heard him introduce something about force, but not as applying to a parliamentary reform.

What was it that he said about force?—What he said about force was applied to trial by jury, and the liberty of the press.

Did he speak of military force?—Yes; but he referred us to an anticipated period, when the palladium of our rights, the liberty of the press might be wrested from us.

Did you hear him say any thing about sacrificing our lives for posterity?—I do not recollect any such expression.

Do you remember any thing about blood following from the axe?—Nothing like it.

Let me ask you whether, according to the best of your recollection, what was said about force referred to a time when we might be deprived of the liberty of the press?—It did; force was not spoken of as applicable to the subject of a reform.

Did you hear him say any thing about Corsica?—Yes.

State to the court, as nearly as you can, what he said; and use if possible his exact words?—He said he had read much on the subject of annual parliaments and universal suffrage, and had never heard of any doubt as to their utility, but only as to their practicability; now, he said, those doubts were removed, for the prince of these realms had granted those privileges to the people of Corsica, as one of the conditions of his being acknowledged sovereign of that country.

Mr. Justice *Ashurst*.—Had granted what privileges?—Universal suffrage, and annual parliaments, my lord.

Mr. *Romilly*.—Did you hear him say any thing of America?—He said that the northern states enjoyed that mode of representation.

When the defendant said that his majesty had granted these privileges to the people of Corsica, did he add these words—"though he denied them to his natural subjects?"—He did not.

If he had made use of such an expression, do you think it would have escaped you?—I think it must have struck me.

Did you know Mr. Binns?—No; I had seen him but once.

Where did you first see him?—At my manufactory in St. Paul's-square. He was introduced by a friend to see the manufactory.

How long was this before the meeting?—I think it was something more than a year.

Did you then form an acquaintance with him?—No; I did not know him again at the meeting.

When did you first see him afterwards?—I cannot exactly say: I think it was six months afterwards.

Did you ever see a copy of his indictment?—Yes; at the last assizes.

Did you examine it?—When I first saw it I paid no attention to it, because I wished to get myself excused.

When you first examined it, did you think that the words, respecting the time when force was necessary to be used, were spoken by Mr. Binns as applying to the refusal of a parliamentary reform, or to a deprivation of the trial by jury, and the liberty of

the press?—At the first moment I looked at it, I was confident the words had no application to a reform.

Was it a printed copy?—Yes.

Edward Porter cross-examined by Mr. *Coke*.

You say you were there before Mr. Binns?—I was.

Did you take any notes of the proceedings?—I did not.

You told us of some papers that were read; do you know the contents of those papers?—He read a printed paper containing instructions from the London Corresponding Society.

How do you know what it was, since you paid no attention?—I am positive from the title.

Pray how long did the reading of these papers take up?—Not long; about ten minutes, or not quite so much.

You say you remember very little of the contents of the papers which were read; how comes it, Mr. Porter, you are so correct as to the words spoken?—Mr. Binns furnished me with a copy of his indictment, and as some of the words spoken were the same as those charged, though delivered in a different connexion, the reading of the indictment replenished my memory.

Did you hear him say any thing about Cornwall, or about the number of electors?—I believe he did, but cannot charge my memory with the particulars.

Was any thing said about Scotland?—No.

Are you certain nothing was said about Scotland?—I recollect nothing.

Or of the majority of the House of Commons being returned by five hundred persons?—No.

Will you swear that such words were not spoken by the defendant?—No, I will not.

You have sworn that nothing was said about force in case of a refusal of a reform: pray what did he say about force.—Repeat his words as exactly as you can?—He said, if a time should come when any minister should be daring enough to wrest from us the right of trial by jury, and the liberty of the press, he hoped there was not a citizen in the room but would shed his last drop of blood in defence of these rights.

Was this spoken before, or after he had been talking of a reform in parliament?—It was some time afterwards.

Did he not say something about the soldiery?—Yes; he referred us to the conduct of the national guards of France, when they were ordered to fire upon the people.

Did you hear him say his majesty and his ministers were well convinced that universal suffrage and annual parliaments were most conducive to the happiness of the people, and had granted them to the Corsicans, but refused them to his natural subjects?—No; I did not.

Will you swear that he did not utter these expressions?—I will.

Then you heard nothing of Cornwall, or of the state of the representation?—Not that I remember.

Nor of Scotland?—Nothing that I recollect.

Will you swear that nothing was said by the defendant about Cornwall or Scotland?—No; I cannot swear that.

It is possible he might have talked of the representation of Scotland, or Cornwall, without making much impression upon you?—Yes; he might.

It is likewise possible he might have asserted, that his majesty and his ministers were well convinced of the necessity of a reform; yet this might have escaped your hearing?—No, it is impossible.

Why is it impossible?—Because the one is a familiar subject, to which I should not have paid much attention; but the other must have struck me forcibly.

Oh! You are very familiar with the state of the representation: pray how many members does Cornwall send?—I cannot say, exactly. [The witness smiled.]

You are not to laugh, sir: be so good as stand upright; and a step higher.—I will stand as high as you please; I will stand upon here, if you please. [Pointing to the top of the partition, behind which he stood.]

You are a politician, it seems, Mr. Porter; and I suppose talk sometimes of his majesty and his ministers?—Yes, frequently; especially of late.

Every day of your life?—I cannot say every day; I do most days.

Did the defendant name his majesty and his ministers together in the course of his speech?—Not to the best of my recollection.

Will you swear he did not?—No; I made no notes; I understood the meeting was called for the purpose of persuading the people to associate, as the means of obtaining a parliamentary reform.

Did you understand the meeting was called by the defendant, with a view to persuade people to petition for a reform?—No.

Was any petition introduced?—No.

Then that meeting was not for the purpose of petitioning?—I cannot say.

Have you seen Mr. Binns of late?—Many times.

Did you not see him last night?—No. Yes; I beg your pardon. I was in his company about ten minutes at Dr. Blunt's, where he called upon a gentleman, a friend of his.

You had no acquaintance with Mr. Binns before the meeting?—No.

But you know him very well now?—I have that pleasure.

Edward Porter re-examined by Mr. Romilly.

Mr. Porter, you think it very likely that the defendant might have talked about the representation of Cornwall, or Scotland, with-

out fixing your attention, because on this subject he could say nothing new or remarkable.—He might.

But not of his majesty or his ministers, as mentioned in the indictment?—No; it must have struck me forcibly.

Henry Dixon sworn.—Examined by Mr. Reader.

Where do you live?—In Birmingham.

What are you?—An anvil-maker.

Were you present at the meeting, at the Swan public-house, on the 11th of March?—I was.

Did you see Mr. Binns?—I did; I was there before he came.

Were you so near Mr. Binns as to be able to hear all he said?—I was.

Did you listen with attention?—I did.

Do you recollect how his discourse began?—I cannot pretend to say what he said first.

Did he read any instructions from the London Corresponding Society?—I think he did.

Do you remember his saying any thing about a parliamentary reform?—I do.

Did you hear him say any thing of the means by which it was to be obtained?—I did.

What were they?—By petitioning the king and parliament.

Was that the only means he recommended?—Yes; peaceably petitioning.

Do you recollect his saying any thing of his majesty and his ministers?—Yes; he said something about them; but I do not exactly recollect the words.

Did he say, they were well convinced that universal suffrage and annual parliaments, were most conducive to the happiness of the people?—No; I do not recollect that.

Mr. Justice Ashurst.—What did he say?—He was saying that his majesty had granted universal suffrage to the Corsicans, that he might be king of Corsica.

Mr. Reader.—In the course of that speech did he say that the king had withheld this right from his natural subjects?—Not that I heard.

Could this have passed without your hearing it?—I think I must have heard it, if it had passed.

If such expression had been used, do you think you should have noticed it?—I think I should.

I wish to know, Mr. Dixon, whether Mr. Binns, in any part of his speech, recommended any other than peaceable measures?—No; if he had, I should have been very much displeased, and have left the room directly.

Did you hear him say any thing of the liberty of the press, or the trial by jury?—Yes; he did say something about them.

Mr. Justice Ashurst.—What was it he said about them; say as nearly as you can?—He was saying he thought the people had a right to the liberty of the press and the trial by jury.

Mr. Reader.—Did he say any thing of the soldiers?—Yes.

Was it said after, or before he was speaking of the liberty of the press?—Afterwards. Did he say any thing about effecting a reform by force?—No.

If he had, must it not have struck you?—Yes, it must.

Did you know Mr. Binns before?—I had seen him but once.

Where did you first see him;—At the Poet Freeth's, in Birmingham.

Henry Dixon cross-examined by Mr. Balguy.

How came you, Mr. Dixon, to go to this meeting?—I went out of curiosity.

What excited your curiosity?—I heard there was to be speaking by one of the delegates from London.

Had you heard that Mr. Binns was to speak?—I did not know whether it was to be Mr. Binns, or Mr. Jones.

But you went for the purpose of hearing what was said?—I did.

Of course you took some observation?—Yes.

What prevented you when you got there, from hearing all that was said?—I dare say I did hear all that was said.

Tell me, sir, did not Mr. Binns begin by reading some instructions?—I think he did.

What! are you doubtful?—I cannot be certain; I believe he did.

Was there much time employed in reading them?—Some few minutes.

Were they read aloud?—Yes, they were.

Pray did you hear this passage [reads]—“You are to strain every power of your mind to awaken the sleeping spirit of liberty”?—I do not recollect.

Was this read—“You are to call upon our fellow citizens, to be ready with us to pursue our common object”?—I do not recollect it.

Did you hear this expression—“If it must be to the scaffold, or rather (if our enemies are desperate enough to bar up every avenue to enquiry and discussion) to the field, at the hazard of extermination, convinced that no temper less decided than this would suffice to regain liberty, from a bold usurping faction.” Do you recollect any thing like this?—No.

Pray, Mr. Dixon, do you remember to have heard this—“But to the end that we may succeed, by the irresistible voice of the people, you are to excite every society with the desire that animates our bosoms, to embrace the nation as brothers”?—I do not remember it; please to read it over again. [Reads—“But to the,” &c. &c.]—I do not remember.

Please to inform my lord what you do remember.

Mr. Romilly.—Why he tells you he knows nothing about it.

Mr. Balguy.—I beg I may not be interrupted.

Mr. Romilly.—He can answer only according to his recollection.

Mr. Balguy.—Give an account of any part of those instructions you did hear?—I cannot recollect any thing about them.

Your memory is quite a blank as to the instructions; when did it take place?—When he began to talk about Corsica.

Oh! then you began to awake from your sleep?—I was not asleep.

Will you say that Mr. Binns did not say that his majesty and his ministers were well convinced that universal suffrage and annual parliaments were for the benefit of the people?—I do not know: I do not think he did.

Give me your answer?—I do not recollect it.

What did he say then about universal suffrage?—He thought it might be done, as the king had granted it to the Corsicans.

Mr. Justice Ashurst.—You heard him say that it was practicable; that it might be done?—Yes, my lord.

Do you recollect any thing about the axe, or the scaffold? Come brush up your memory.—I do not recollect it.

Or about the blood streaming, or about a tree?—No.

Do you mean to swear that he said nothing about an axe, a scaffold, of blood, or of a tree?—I do not recollect it.

Do you mean that the jury should understand you to swear that he did not make use of those expressions?—I do not recollect them.

Did he say any thing of Cornwall, or Scotland?—Not that I heard.

Or that the majority of the House of Commons was returned by five hundred persons?—He mentioned the number of the House of Commons.

And that was all he said about it?—All that I remember.

And so Mr. Binns came to tell you how many persons the House of Commons consisted of, which any body may find in the Court Kalendar. Pray did he talk of the soldiery?—Yes.

Was it before or after he had been talking of a reform in parliament?—Some time afterwards.

And what did he say between?—I cannot recollect.

I should be glad if you would tell us what he said about the soldiers.—He said he thought the soldiers would not fire upon the people, after peaceably petitioning.

And what else?—When they were contending for trial by jury, and the liberty of the press.

Mr. Justice Ashurst.—Have you finished the sentence?

[His lordship here read over the last words of the witness several times, as thinking they did not make perfect sense. Mr. Romilly endeavoured to explain to his lordship.]

Mr. Justice Ashurst.—Was that all you meant to say?—Yes, my lord.

Mr. Bulguy.—You say it was intended to petition; what was to be the subject?—To petition his majesty that there might be universal suffrage and annual parliaments.

So that after petitioning peaceably, he said the soldiers would not fire upon the people?—Yes.

Do you recollect any thing about the national guards of France?—There was something said about them, but I do not recollect exactly what. I think he said the soldiers, like the national guards of France, would not fire upon the people after peaceably petitioning?—Yes.

Having recollected so little, might not something have been said which you do not recollect?—Certainly.

Were you one that was served with a copy of the indictment?—I had a copy.

When?—I think it was a little before the last assizes.

Who delivered it?—Mr. Binns.

Did you know before that time that you were to be called as a witness?—No.

Had you ever told Mr. Binns what you knew of this business before he brought you the indictment?—No.

Did you examine it immediately?—I looked it over while Mr. Binns was present.

Did you tell him what you could recollect?—I told him I had not thought much about it.

Has any paper been delivered to you since that time about this business?—No.

What! do you mean to swear that you have had no paper?—Yes; I am sure I have had no paper.

Has any body told you, in discourse since, what you were to say? Mr. Binns, or any body?—No.

Do you swear it?—I have sworn it. I am upon my oath.

Have you yourself told nobody?—No.

Has any body ever examined you?—Yes; Mr. Tomes* examined me once.

Had you been subpoenaed when Mr. Tomes examined you?—Yes.

On your oath, had you or had you not, before Mr. Tomes examined you, told any body else what you knew of this business?—I never told any body.

How then came you to be subpoenaed?—Mr. Binns said he heard I was there, and therefore he thought proper to subpoena me.

Henry Dixon re-examined by Mr. Reader.

So that you come here to say what you recollect, without having ever said a word about what you remember to any body, except once to Mr. Tomes?—Yes.

Do you mean to say that Mr. Binns made use of the word force, in the progress of his discourse?—Yes; he did say something of force.

What was it that he said with respect to force? Was it before or after he talked about the liberty of the press, and the trial by jury? [Here the witness paused, as though recollecting.] Endeavour to recollect yourself, and tell me whether force applied to the liberty of the press, and the trial by jury?—I think it did.

And not to a parliamentary reform?—No.

James Phillips Lucas sworn.—Examined by Mr. Romilly.

What are you, Mr. Lucas?—An auctioneer's clerk.

Where do you live?—In Birmingham.

Are you a member of any political society?—No, I never was.

Were you at the meeting at the Swan public house on the 11th of March?—I was.

Do you remember Mr. Binns making a speech there?—Yes.

What part did you hear of it?—I heard the whole.

What was the beginning of it?—I cannot charge my memory.

Were any papers read?—Yes.

Was the speech concerning a reform in parliament?—Yes.

What did he say?—He said a parliamentary reform was necessary.

Did he say any thing of the means by which men should seek to obtain it?—Yes, by petitioning the House of Commons.

Did he speak of any other means?—No; he said those were the only means.

Did he say any thing relative to Corsica?—Yes; he said that the granting of universal suffrage was the means by which his majesty was acknowledged king of Corsica.

Did he say any thing more on this subject?—Not that I remember.

Did he say that the king and his ministers had refused that right to his natural subjects?—No.

Were you attentive to his speech?—Not particularly so; yet I should have remembered this if he had said it.

Did he say any thing respecting force, or about a time when force might be necessary to be used?—I do not remember.

Did he say any thing relative to the soldiers?—He was pointing out the difference between foreign soldiers, and the soldiers of the country; the one, he said, had the interests of the country more at heart than the other.

Did he say any thing more on this subject?—I do not remember any thing more.

Any thing about soldiers acting against the people?—Not acting against the people, but with them.

For what purpose?—To defend the right of trial by jury, and the liberty of the press.

Did what he said about force apply to a reform in parliament; or to the liberty of the press, and the trial by jury?—A reform in parliament was not mentioned at that time.

* Agent to the Attorneys for the Defendants

At what time was it that a reform had been mentioned?—One was at the beginning of his speech, the other at the end.

Did he, in the course of his speech, recommend to the people to conduct themselves peaceably, and obey the laws?—He did, repeatedly.

Had you any acquaintance with Mr. Binns?—I never saw him before.

When did you next see him?—Some time afterwards, when he put a copy of the indictment into my hands.

James Philips Lucas cross-examined by *Mr. Clarke*.

Pray what sort of a meeting did you expect it would be?

[*Mr. Romilly* objected to this question; the witness however answered it.]

Witness.—A political lecture.

That was the first time you saw Mr. Binns?

—Yes.

How many persons were there in the room?

—I cannot tell; I did not count them?

Say as nearly as you can guess?—There might be forty or fifty.

Was the room as full as it could hold?—I do not know what you mean; it was pretty full.

Could you have stuck a pin between?—Certainly.

Then the room was not as full as it would hold?—No.

Would it have held sixty?—I do not know.

May I ask you, did you hear all the doctrines?—I was there all the time.

Did the lecture meet with your approbation?

[Here *Mr. Romilly* again objected to the question, as improper; but *Mr. Clarke* pressing it, the witness answered.]

Witness.—It did not meet with my disapprobation.

Was not reading some instructions the first thing done?—Yes.

What was the purport of them?—His instructions were to persuade the people that a reform in parliament was necessary.

Did you pay any attention to the instructions?—Not particularly.

Do you recollect any part of them?—I do not.

I shall read some passages to you. Do you recollect this: [reads] "You are always to reflect that you are wrestling with the enemies of the human race?"—I do not recollect this.

Mr. Clarke.—"Not for yourselves, merely; for you may not see the full day of liberty; but for the child hanging on the breast: and that the question, whether the next generation shall be free or not, may greatly depend on the wisdom and integrity of your conduct, in the generous mission which you and your fellow deputies now take upon yourselves." Do you recollect nothing of all this?—No; I don't recollect a word about a child.

[*Reads*].—"You are to strain every power of your mind to awaken the sleeping spirit of liberty; you are to call upon our fellow citizens to be ready with us, to pursue our common object, if it must be, to the scaffold!" Do you remember these words?—No; none of them.

Then you recollect nothing but that he was sent to enforce the necessity of parliamentary reform. By what means did you say this reform was to be obtained?—They were to petition the House of Commons.

Did he say what was to be done in case that means failed?—No.

Do you mean to swear that you recollect every thing that passed?—Not every action; nor every word.

How long was he speaking?—About an hour.

You do not recollect all the words?—Something might have been said which I do not now recollect.

Did he say any thing of the king, or his ministers?—No.

Will you swear that, in the course of his speech, he said nothing of the king or his ministers?—No; I do not swear that. But I swear he did not say what is stated in the indictment concerning them.

You say he was stating the difference between soldiers of the country, and foreign soldiers; what was it that gave rise to it?—I cannot recollect: I do not pretend to give every particular.

You have told us that the soldiers would act in defence of the liberty of the press, and the trial by jury; now what gave rise to this?—What gave rise to it was, his saying the liberty of the press and the trial by jury might be some time or other in danger, and he said a parliamentary reform would secure them.

Did he say they were in danger?—No; he said they might be in danger. He said the soldiers would assist the people if they were in danger.

How long have you known what to say?—Not till this moment.

Who gave you a copy of the indictment?—*Mr. Binns*.

Then you did not know what you came here for?—I knew very well what I came here for; but did not know what I must say. I could not tell what questions might be put to me.

Did you not say yesterday, that you knew little or nothing about the matter?—I might say I could be of little use to *Mr. Binns*.

Why then were you afraid that your evidence would be of little use to *Mr. Binns*?—Because my recollection is not strong.

Do you mean to say that your recollection is not to be relied on?—No.

What then?—It is to be depended upon as far as it goes.

How often have you read the indictment?—A few times.

When did you tell *Mr. Binns* what you could say?—I never told him.

Who took your examination?—Mr. Tomes.
And that was the first time?—Yes.

John Philips Lucas re-examined by Mr. Romilly.

Had you before that said, you had been at the meeting?—Mr. Binns had heard that I was there.

What did you mean by your recollection not being strong?—I mean that I cannot recollect the particular words.

Can you tell what was the title of the instructions?—No.

Was it "Instructions to citizen John Gale Jones?"—No; I think it was to both.

Mr. Lucas: on your oath, and as you wish to be considered as an honest man, do you think that what was said about force, applied to parliamentary reform, or the liberty of the press and trial by jury?—To the latter.

John Fawkener sworn.—Examined by Mr. Reader.

Where do you live?—In Birmingham.

What are you?—Agent to the Liverpool waggon.

Mr. Coke.—Have you not been in court during part of the trial?—No; I have been in the garden with the other witnesses.

[The witnesses on both sides were ordered out of court, as soon as the jury were sworn.]

Mr. Reader.—Are you a member of any political society?—No.

Were you at the meeting, at the Swan public house?—I was.

Were you there at the beginning of Mr. Binns's speech?—Yes; I was there before he came in.

Did you hear the whole of his speech?—Yes; I was near Mr. Binns all the time, and listened with considerable attention?

What did he begin with?—He began by reading the instructions, and commenting upon them.

Did you hear him say any thing about annual parliaments, and universal suffrage?—Yes.

What did he say of them?—He spoke of them as the only radical reform.

By what means was this reform to be obtained?—By legal and peaceable means; by petitioning the House of Commons.

Did he talk of using force?—No.

If he had, could it have escaped your notice?—I think it must have materially struck me.

Did he speak of its being practicable?—Yes; he pointed out that it was practicable; and answered some objections to it.

What were the objections?—There were several; but I do not remember them.

Did he say any thing about Corsica?—Yes; he mentioned something of his majesty and his ministers having granted it to Corsica; and therefore he did not see any reason why it might not be granted to this country.

Did he say that his majesty and his ministers saw no reason why it might not be granted to the people of this country?—No; he said that he (Mr. Binns) saw no reason, &c.

But, did he say that his majesty had granted it to Corsica, and yet withheld it from his natural subjects?—No; he said no such thing.

If he had could it have escaped your notice?—No; it could not.

In discussing the subject of parliamentary reform, did he say any thing of the treason and sedition bills?—Nothing, that I recollect.

Do you recollect any thing concerning the trial by jury, and the liberty of the press?—Yes.

What?—He said, if any minister should be daring enough to take away the trial by jury, and the freedom of the press, and afterwards bring the soldiers upon the people, to force them to submission to things opposite to the constitution, he hoped there was not a person in the room, but would shed the last drop of his blood in defence of his rights.

So that what he said about force, applied to a time when we might be deprived of the liberty of the press and the trial by jury?—It did.

Do you mean to speak accurately as to the words, or the subject only?—The subject only.

In treating the subject of parliamentary reform, did he talk of any other means than petitioning?—No.

Did you know Mr. Binns?—No; never saw him before.

Had you a copy of the indictment?—Yes.

Are you sure that what was said respecting force applied to the liberty of the press and trial by jury?—I am sure.

John Fawkener cross-examined by Mr. Percival.

Are you a member of any political club?—No.

Have you been in the habit of attending public meetings of any kind?—No.

Did you take any notes of the proceedings of this meeting, or of what you heard?—No.

Did you ever tell Mr. Binns what you knew?—Never.

When did you first know that your assistance would be wanted here?—About three weeks ago.

You were not here at the last assizes?—I was; but not as an evidence.

Did you hear Mr. Jones's trial?—I was present in the court about half an hour.

When did you receive a copy of the indictment?—About three weeks ago.

Did you ever repeat to any body what you knew?—Never; but I retained it in my mind.

Who gave you the copy of the indictment?—Mr. Belcher.

In what case do you say Mr. Binns talked of using force?—In case of an attempt to es-

establish despotism, and to take away the liberty of the press and trial by jury.

Did he say any thing of the representation of Cornwall, or Scotland?—I do not recollect that he did.

Or about people going to the scaffold, or to the field, or about blood flowing?—He said something about blood streaming from the scaffold.

What were his words; endeavour to recollect?—I cannot recollect the expressions, but suppose it was to be in defence of their rights and liberties.

You say he began by reading some instructions; now can you recollect any passages from those instructions?—I cannot.

Do you think you might recollect any, were they read to you?—Possibly I might.

[Reads]—“You are always to reflect that you are wrestling with the enemies of the human race?” Do you recollect this?—I think I do.

[Reads]—“It behoves you, notwithstanding, to convince the timid, that no fears are to be entertained respecting the legal consequences of the information of spies, since the security of the friends of reform is in the legality of their object and proceedings?”—I do recollect this.

[Reads]—“The design of the above articles is, to remove misapprehensions relative to the safety of our association, under the new laws. This part of your mission effected, you are to strain every power of your mind to awaken the sleeping spirit of liberty?”—I think I do remember that.

[Reads]—“You are to call upon our fellow citizens to be ready with us to pursue our common object, if it must be to the scaffold?”—I rather think this was.

“Or to the field, at the hazard of extermination?”—I think I do recollect this.

John Fawcener re-examined by Mr. *Reader*.

Did you consider the instructions as addressed to Mr. Binns?—Yes.

You recollect his saying something about blood; was it after, or before he mentioned the soldiery?—It was after.

Has any body ever examined you?—Nobody.

Not even Mr. Tomes?—No.

Thomas Clark sworn.—Examined by Mr. *Romilly*.

What are you?—A schoolmaster.

Where do you live?—In Newhall-street.

Are you a housekeeper?—Yes.

Did you live there in March last?—I did.

Were you present at the meeting at the Swan public house?—I was.

Did you see Mr. Binns there?—I did.

Were you present all the time?—Yes; I was there before him, and went when he did.

Then you heard the whole of his speech?—I did.

Had you ever seen him before?—Never.

What was the subject of his discourse?—

A parliamentary reform.

By what means was this to be obtained?—

By peaceable and legal means; by petitioning the House of Commons.

Did he speak of any other means?—No.

Did he recommend peaceable conduct?—Very forcibly.

Did he recommend using force?—By no means.

Do you mean to swear that he did not?—I do; I was very attentive.

Did he say any thing about Corsica?—Talking of the practicability of what he was recommending, namely, annual parliaments and universal suffrage, he said that his majesty had granted them to the people of Corsica; he also said that some of the states of America had practised that mode of representation.

What else?—Nothing relative to Corsica.

Did he say, that his majesty and his ministers were well convinced that universal suffrage, and annual parliaments, were most conducive to the happiness of the people?—No; he said that he himself was convinced.

Do you think you should have heard him if he had said it?—I certainly should.

Did he say any thing of his natural subjects?—Nothing that I remember.

Or any thing of the soldiers not acting against the people?—He did.

What was it?—It was after those circumstances which he supposed might happen.

Now will you tell us what those circumstances were which he supposed might happen?—He said that if government should deprive the people of the trial by jury and the liberty of the press, and stop up every avenue to discussion and enquiry, in such a case he hoped there was not a citizen in the room that would not be willing to lose the last drop of his blood in defence of those privileges.

Counsel.—Continue.

Witness.—He said that if the soldiers—

Counsel.—Stay—Did this follow immediately?—Not immediately: it did follow.

Counsel.—Proceed.

Witness.—If the soldiers were called upon to fire on the people, while struggling in the cause of liberty, they would not be willing to act against them.

Was that all?—I believe it was.

You say this did not immediately follow, but that something was said between; now did it relate to the liberty of the press and the trial by jury, or to a reform in parliament?—It related to neither: I think it related to the introduction of foreign troops.

Which had been last mentioned?—I do not know.

What do you understand by the people struggling in the cause of liberty, and the soldiers being unwilling to fire upon them?—I understand this; that if the soldiers were

called upon to fire on the people, while contending for the liberty of the press, and the trial by jury, that, in such a case, they would not act against them.

Did he talk of it as what had already happened, or only as a supposable case?—Only as a supposable case; his words were, “if it should happen.”

What did he say respecting foreign troops?—That government was introducing foreign troops, who, not having relations and friends in the country, to whom they were attached, would be ready to execute any orders their superiors might give them; but if the defence of the country were entrusted to those who had relations and friends, they would feel an interest in the preservation of liberty.

And this was said in the interval?—Yes.

Have you made use of the exact words, or the sense only?—To the best of my recollection, they are the exact words; and I would just observe, that I have had nothing to assist my memory but the indictment.

Let us understand you; do you mean to say, that what was said respecting force, related to a time when the people might be deprived of the liberty of the press and trial by jury?—Exactly so.

Are you a member of any political society?—I am not; I do not know that there is any such society now.

You were a member?—Yes; but I believe the society is dissolved; I never attended more than six nights.

Were you a member before Mr. Binns came to Birmingham?—No.

When was the next time that you saw Mr. Binns after the meeting?—I saw him some time after, when he was before the magistrates, at the Public Office.

When did you receive a copy of the indictment?—Soon after Mr. Binns had obtained it.

Thomas Clark cross-examined by Mr. Coke.

Have you many scholars?—Not many.

Do you teach them latin and greek?—No.

You teach them politics, I suppose?—No; I teach them writing and reading.

You teach them writing and reading, and you go to learn politics of Mr. Binns?—I do not go any where to learn politics.

Was it not to learn politics that you went to the meetings of the society? You say you attended but six nights?—Only six nights at the utmost.

Was it not because the society never met more than six nights?—I am certain the society has met since I discontinued my attendance.

Do you mean to tell us you have altered your politics?—If you mean to say that I have changed my political opinions, you are mistaken.

You are not a member now?—I do not know whether they have erased my name or not, but I have not attended lately.

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What was the principal subject of Mr. Binns's discourse? was it not a reform in parliament?—Yes.

You said something about the trial by jury, and the liberty of the press; and that in a supposable case, the soldiers would not act against the people?—Not if they should be contending for the trial by jury, and liberty of the press.

But you said afterwards it had no relation to this?—I said it did not immediately follow it.

Pray what did immediately follow?—Some observations on the introduction of foreign troops.

How came this subject to be introduced?—I believe it was because it had been discussed a little before in parliament.

You had a copy of the indictment?—Yes, a printed copy.

Who gave it you?—Mr. Binns.

And he put it into your hands, for the purpose of disproving it, if you could, with a safe conscience?—I knew it was his intention to subpoena me, and therefore I wished a copy.

Have you a copy about you?—I believe I have.

Be so good as to show it me?

[The witness here delivered a copy.]

Why have you made observations in the margin?—To refresh my memory.

[The defendant's counsel wished to have the marginal notes read; this the counsel for the prosecution declined.]

When were these observations made?—I had made similar ones on a former copy, and when that was worn out, I procured another.

Did you not make these observations last night, at supper with Mr. Binns?—No.

On your oath; how long is it since you made them?—I cannot tell exactly.

Is it a fortnight?—Much more.

Did you not show those notes to Mr. Binns?—I never did, to him, or any other person, for I thought it would be very improper.

Did you not sup with Mr. Binns last night; I heard there was a jovial meeting?—No, I did not; I supped at a friend's house.

Did you see him last night, or yesterday?—I did.

Were you at a house called the Cottage of Content, on a late occasion?—I had not that honour.

Does Mr. Binns live there?—No.

I believe the Cottage of Content contains many discontented people?—I believe it contains a very happy family.

Did Mr. Binns ever instruct you how to behave on your examination?—He only advised me to be cool and collected.

Mr. Coke.—That was very good advice coming from Mr. Binns, or any other person.

Do you know, Mr. Clark, where the county of Cornwall is situated?—Yes.

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Did Mr. Binns mention Cornwall?—Very likely; I know he mentioned Old Sarum.—[Here was a loud laugh from every part of the Court.]

Did he say how the county of Cornwall came to have so many members; was it by their spirit of resistance to oppression?—I do not recollect.

Did he name the king's ministers?—I rather think he did.

What did he say of them?—That they had been favourable to the principles of parliamentary reform, before they got into place, but not since.

Did he say (for it might very naturally happen) that his majesty or his ministers were convinced that annual parliaments were most conducive to the happiness of his subjects?—No, I do not remember any such expression.

Will you swear it was not said?—I did not hear it.

Thomas Clark re-examined by Mr. *Romilly*.

Mr. Clark, I shall not ask you a string of irrelevant questions, as my learned friend has done; but shall confine myself to the evidence. Had you not another copy of the indictment?—Yes.

Were the observations the same on both?—The same in substance, perhaps not exactly the same words; I am desirous they should be read.

You continued but a very short time a member of the society?—But a very short time.

How long had it existed before Mr. Binns came?—I cannot tell.

REPLY.

The Honourable *Spencer Perceval*.—May it please your Lordship; Gentlemen of the Jury; The length of this trial is a pretty good security that I shall not trouble you with many observations; and indeed many do not seem to me to be necessary: and as to what Mr. Romilly has said, complaining of hardship on account of the shortness with which I opened, I think my friend has fully justified me by the length into which he has gone. I forbore, gentlemen, because if the words be proved to have been spoken as stated in the indictment, it is impossible for any one to suppose it is not a crime; and, indeed, my learned friend does not come here to deny it: he does not pretend to deny that it would be highly criminal, if the words were spoken; but he comes here to deny and disprove the words. How far he has been able to do this, must be left, gentlemen, to your determination.

In one instance my learned friend has certainly mistaken me:—he has made many observations on my calling the principle of sacrificing our lives for posterity a bad principle, a monstrous doctrine, and a false philosophy.

I did say, gentlemen, and I still think that it is a false philosophy, and a dangerous principle, to sacrifice the interests of the present day to futurity—to take care of posterity at the expense of our present connexions. The source of all our blessings and enjoyments, is in the natural propensities and affections of the human heart; and it is not by stifling these emotions, these sensibilities implanted by nature, but by giving them full scope, that we are to look for the birth of real and genuine patriotism; for what is patriotism, but those home affections of the heart, expanded to embrace more distant objects. This is the natural progress of principle—a man begins by being a good son, a good husband, a good father, and next a good citizen; and thus he goes on to improve those principles, which God has planted in his nature.

Those who wish to stifle this principle of morality, stop up the sources of our dearest enjoyments; and that which they introduce in its stead, must lead to consequences which justify me in calling it a false philosophy. But, gentlemen, I do not think the farther discussion of this subject worthy your attention. It will be more proper to direct your attention to that subject, on which you are called upon, in the most solemn manner, to decide according to the evidence.

Gentlemen, you will please to observe, that the question at issue does not rest upon the identity of the words, as stated in the indictment, but upon the application of the words. By admitting this, my learned friend has saved me a great deal of trouble. I am ready to admit, that the witnesses for the prosecution have in some degree varied; have given various readings, as it were, of the indictment; and, in this respect have fallen into a very natural error, which ought by no means to invalidate the weight of their evidence; especially when you consider, gentlemen, that this error has been corrected by the defendant's own witnesses.

Those particulars in which our witnesses have failed, have been proved by the witnesses of the defendant himself. This being the nature of the case, suffer me to lay before you the only question for your consideration; and that is, whether the witnesses on our side, or the witnesses on the part of the defendant, are most correct, as to the application of the words. This, gentlemen, is the question; not whether the words passed, but whether they were applied to this or to that subject. The words, gentlemen, I mean, are those respecting the "soldiers," and "using force;" and you are to decide whether they were spoken as applicable to a reform in parliament, or to the liberty of the press and trial by jury.

Now, in the first place, it becomes material to compare the degree of credit you will be inclined to give to the witnesses on the one side, and on the other. It has been, I think, clearly proved, by both sides, that the great

object of his mission, had no immediate relation to the liberty of the press, or the trial by jury, for these were not considered as attacked; but his business, as a delegate, was to enforce the necessity of parliamentary reform, and to establish corresponding societies, for the promotion of that object. The witnesses, on both sides, tell you this was the subject, and leading feature of his discourse. In this, gentlemen, they are all agreed; and it now remains for you to decide, whether the words in question were, or were not applicable to it.

It will be impossible for me to follow the witnesses for the defendant through the whole of the evidence, neither is it at all necessary. I shall just observe, that the first witnesses refer the words in question to the liberty of the press and trial by jury, but the last witness, Mr. Clark, differing from them, and indeed differing from truth, tells you it related to the introduction of foreign troops: here, you see, gentlemen, the witnesses materially differ. Great pains have indeed been taken to procure a sufficient number of witnesses, but, in this instance, they have been rather unlucky: a greater number of witnesses have been brought than ever were before, in a cause of this nature, in this court. Mr. Romilly said, that one of my witnesses must be guilty of perjury, because he said that the word was *onset*, instead of *outset*. I am surprised my learned friend should say this man must be guilty of so heinous a crime as wilful perjury, on so slight a circumstance. The only thing this trifling variation proves, is, that the witness had not learned his part.

The circumstances connected with the evidence of the last witness, on the part of the defendant, are indeed material, and give more room for suspicion. He comes here, with a copy of the indictment in his hand—put into his hand, not to prove, but to disprove the words. What would my learned friend have said, if our witnesses had come with copies of the indictment: would he or would you gentlemen, have believed one word they might have said? Would you not have believed they had been learning their lesson by heart; Could you have believed that such witnesses deserved your credit as honest men. No? it must have materially discredited their evidence. It is worth while, gentlemen, to observe what was done with respect to the first witness: Mr. Binns called and put a copy of the indictment into his hands, without waiting even to speak a word; but knowing he had put it into safe hands, he tells his attorney he might subpoena this man without examination: now is it likely that the defendant would have been at the expense of bringing this witness, without once enquiring whether he knew any thing of the matter, as it is pretended he did? I do not take upon me to say that this man is guilty of perjury, but I must say he is not entitled to your credit, under circumstances so suspicious. When you

reflect, gentlemen, that six witnesses come here without having ever had any conversation with each other, without comparing notes, and agree with such accuracy, with respect to the general expressions, which they swear to; not agreeing as to the sense, and varying as to the particular expression, as is the case with the witnesses for the prosecution; you cannot, gentlemen, if you have any knowledge of business, or of the human heart, believe that these men speak from their own recollection, but must speak in consequence of uniform previous instruction.

Gentlemen, the nature of the evidence for the defendant is, for the most part, merely negative, and this ought to make a due impression on your minds. Of many material points they can only say they do not recollect such expressions. Two witnesses have positively sworn that the defendant said his majesty had refused annual parliaments and universal suffrage to his natural subjects, the people of this country. The witnesses for the defendant can only say to this, that they do not remember such words; and upon this testimony, you are called upon to believe (if it be possible you can), that the words were not spoken.

The bare circumstance of a man standing up in a public manner, to give lectures on political subjects, and appearing in the character of a delegate, with instructions in his hand, pointedly addressed to the meeting, was alone sufficiently novel and extraordinary, to have attracted particular and public notice; for this was a more uncommon thing than any part of the proceedings; and yet, when these witnesses are examined, with respect to what they recollect of these instructions, their memory is exceedingly defective, they can scarcely remember a single sentence; and why? the reason I think is pretty evident—they were not instructed to carry this in their minds; and yet, some part of the instructions contain passages so striking, that it is truly astonishing that men, who have so exact and retentive memories in other respects, should retain no traces of these in their minds. I shall repeat one or two of the passages; and, gentlemen, I think you will agree with me, that they were calculated to produce a very deep impression. [Reads.]

“This part of your mission effected, you are to strain every power of your mind, to awaken the sleeping spirit of liberty; you are to call upon our fellow citizens to be ready with us to pursue our common object, if it must be to the scaffold, or rather (if our enemies are desperate enough to bar up every avenue to inquiry and discussion) to the field, at the hazard of extermination; convinced, that no temper less decided than this, will suffice to regain liberty, from a bold usurping faction.”

Of this remarkable quotation, the witnesses had not the slightest recollection; but they have likewise forgotten another which is, if possible, still more striking.

"You are always to reflect, that you are wrestling with the enemies of the human race, not for yourselves merely, for you may not see the full day of liberty, but for the child hanging on the breast; and that the question, whether the next generation shall be free or not? may greatly depend on the wisdom and integrity of your conduct, in the generous mission which you and your fellow-deputies now take upon yourselves."

Gentlemen, it is impossible that a person, paying any attention to the speaker, could have forgotten such a passage as this; and after this, I think the arguments of my learned friend, will hardly induce you to give much credit to the evidence of men, whose memories are so remarkably defective in some things, while they retain even the slightest minutiae in regard to others.

Gentlemen, I beg leave once more to observe, that the question is, whether the language which has been proved to have been used by Mr. Binns, and which is corroborated by many passages in the instructions, had or had not reference to a parliamentary reform. Two witnesses for the prosecution have positively sworn in the affirmative, and have confirmed it by evidence which carry every appearance of truth; and it is only attempted to be disproved by the negative kind of evidence, which I just now mentioned. On the different degree of credit to which these kinds of evidence are entitled, I have already sufficiently enlarged; and as I cannot suppose that the least shadow of doubt can possibly remain on your minds on this subject, I shall not take up more of your time.

Gentlemen, you must see the propriety of producing these papers in evidence; they tend materially to confirm the truth of the testimony of Mr. Guest and Mr. Sutton, and they contain expressions of the same import with some of those in the indictment, and have not been contradicted by a single witness for the defendant.

I see, gentlemen, you are almost tired; permit me, however, before I conclude, to make a few observations on the credibility of the witnesses; and once more let me remind you, that you have not to decide as to the particular words made use of, as my learned friend admits, and as his lordship will inform you, but only as to their application.

My learned friend seems to triumph in the number of his witnesses; but he well knows that two witnesses are as good as two hundred. He says he should not be surprised if his witnesses varied as to particular expressions, but that he should not like them the less on that account. It would have been handsome to have made the same allowance on my account, and to have extended that indulgence to others which he demanded for himself.

The first objection which is made to the credibility of our witness is, that he took notes; but it appears that one of the witnesses

for the defendant also took notes; but I do not see that they are the less entitled to credit on this account. Mr. Guest says he took notes for the purpose of refreshing his memory; and it appears he brought them with him, at the last assizes, but now, not conceiving them necessary, because he well knew the contents, he had left them at home: there is, nothing in all this that can impeach the veracity of this witness, or that can lessen the credibility of his deposition.

I must avail myself of another observation of my learned friend, with respect to this witness. He forbore to press him, he says—but why? I can conceive no other reason than, because he could not, with any advantage; and yet he attacks him, as guilty of wilful perjury, on the frivolous observation of using the word onset for outset.

It is objected, that we have not brought more witnesses. As to Mr. Carver, we have forbore to examine him, for a very obvious reason: his memory might be imperfect; and little credit might be thought due to a man who is subject to temporary derangements of intellect; there was no harm, however, in having him here, as we were still left at liberty to use our own discretion. With respect to the constables and Mr. Wooldridge, it is sufficient to remark, that they were not present during the whole time, but were in and out; consequently, could have heard nothing but partially; but this objection is, in fact, of no force whatever, two witnesses being sufficient for any legal purpose; and whether it is more likely that two men only should be found, or that many should agree in the same story, and the same words, must be left, gentlemen, to your decision.

Gentlemen, great pains have been taken by my learned friend to persuade you that the variations in the evidence and the indictment are material, and such as destroy the credibility of their testimony. I cannot believe you will attach so much weight to these variations; but that they will appear to you such errors, as men, speaking from the beat of their recollection, will naturally fall into; as, for instance, the words onset and outset; which, in this context, cannot alter the sense, but may very well be construed to mean just the same thing.

Gentlemen, you have now the whole of the evidence before you; and you are carefully to weigh and ascertain the degree of probability or certainty, which results therefrom, in connexion with the paper of instructions which you have heard read: you will consider what words have been proved, as stated in the indictment, and what importance ought to be attached to the variations in the evidence: you will consider the credibility of the witnesses on the one side and on the other: you are to consider, whether two men of fair characters, would, of their own accord, and seemingly without any interested motives, come here to perjure themselves; you are to deter-

mine and distinguish the different degrees of credit to which persons are entitled, who speak to what they *do* know, in preference to those who speak only from what they *do not* know: and after duly weighing all these circumstances, you are to give your verdict accordingly.

If you believe that the defendant was actuated by honest and laudable motives, that he spoke neither the words contained in the indictment, nor any words capable of a similar construction; if you believe that what was said about force, applied not to a reform in parliament, and that the defendant did not recommend forcible means to obtain a reform, you must acquit him; but if, on the contrary, you think the words proved, in substance at least, and that their application was such as is stated in the indictment, you must give a verdict for the crown.

SUMMING UP

Mr. Justice *Ashhurst*.—Gentlemen of the Jury. The great length of time which has already been engaged in the present trial, will prevent me from troubling you with any observations, except such as I shall deem absolutely necessary, in the discharge of my duty, between the crown, and the defendant, who is the object of this prosecution.

I shall reserve whatever remarks I shall submit to your consideration, until I have repeated to you the evidence which has been adduced to support the charge; and also that which has been brought forward by the defendant.

[Here his lordship recapitulated the whole of the evidence.]

This, gentlemen, is the whole of the evidence. You are, in the first place, to consider, whether the words contained in the indictment were spoken by the defendant; and, in the next place, whether they were spoken with the intention there charged; that is, whether they had reference to the subjects contained in the indictment, or to those which have been urged in the defence—and this is a very important consideration.

In the first place, with respect to Corsica, the words in the indictment are, that “his majesty and his ministers are well convinced, that annual parliaments and universal suffrage are most conducive to the happiness of the people, and have granted it to Corsica, though he has withheld that right from his natural subjects.” Gentlemen, the words of the first witness, Joseph Mason Guest, are, that his majesty was aware that such were most conducive to the happiness of his people. The grammatical signification of these sentences, are not the same; and you, gentlemen, must consider what meaning they will bear, and exercise your judgment thereon. Benjamin Sutton, the other witness, says the words were, his majesty was aware that it was not inconsistent with the happiness of

his people—this is still wider from the indictment, and is different from the evidence of Guest. On the other hand, the witnesses called by the defendant, deny that this was said of his majesty; but that he (John Binns) was convinced, and so forth. You, gentlemen, are to decide what degree of credit is to be given to these witnesses respectively; and on the whole, to determine whether this charge is substantiated. You have been told by the counsel for the prosecution, that these variations do not materially affect the sense; but on this you are to exercise your judgment, and thereby form your determination.

In the next place, with respect to the third count, the words in the indictment are,—“our object is to obtain it by every peaceable means in our power, for it would be shocking to humanity to shed the blood of our fellow-creatures; but if they continue obstinate, and there should be a time when force is necessary to be used, I hope there is not a citizen in the room but would shed his last drop of blood, either in the field or on the scaffold.” These words, or words of the same import, were positively sworn to by Joseph Mason Guest; but the other witness, Benjamin Sutton, does not swear to this; on the contrary, he says, he understood Mr. Binns, their object, namely, a reform in parliament, was to be brought about by legal and peaceable means. All the witnesses, for the defendant agree, that the latter part of these words were spoken, namely “that if there should be a time when force was necessary to be used, I hope there is not a citizen in the room,” and so forth. These words, or words of exactly the same import; are admitted to have been spoken by the defendant’s own witnesses; but they deny that these words referred to the obtaining a reform in parliament; and they explain it thus—that if there should come a time when ministers, or government should be daring enough to endeavour to wrest from us the right of trial by jury and the liberty of the press, and force should be necessary to be used for the preservation of those rights, that in such case he hoped there was not a citizen, &c. &c.

Gentlemen, you are here to consider what degree of credit is due to one witness only (Guest) in opposition to six produced by the defendant; this, gentlemen, is the most important point for your consideration, for on this depend the merits of the case: if you think Mr. Binns only recommended force in case of a deprivation of the trial by jury, and the liberty of the press, you will acquit him, for it is possible that cases may arise in which resistance would not only be lawful but commendable; but if you think he recommended forcible means for the purpose of obtaining a reform in parliament, you must convict him; for that would be highly criminal, and as inflammable language as could be made use of to come within the crime of sedition; and this you will do, though the words proved be not literally the same as those in the in-

dictment, provided you think they had a seditious tendency, and were spoken by Mr. Binns with the intentions laid in the indictment.

Gentlemen, the fourth count relates to the soldiery. The words in the indictment are—"if the soldiers were called upon to act against you, like the national guards, who were called upon to fire on the people in the outset of the revolution in France, they would not dare to draw the trigger or push the bayonet against the preservers of their freedom and their liberty." Now, gentlemen, these words are positively sworn to by the first witness (Guest) with the trifling variation of onset for outset. A great deal has been unnecessarily said about these words—on the part of the crown to persuade you that that they are nearly synonymous—and on the part of the defendant to prove that they mean very different things. Gentlemen, you need not give yourselves any trouble on this point, for though the variation might seem to you trivial, and sufficient to confirm the testimony of the witness, and indeed, in this place, *onset* might be very well substituted for *outset*, without materially altering the sense; yet, in this case, this is not the point—the question is not, whether the words were spoken, for this is admitted by some of the witnesses for the defendant, but the question is, what application had they? Did they refer to a time when the people might be contending for the right of trial by jury, and for the liberty of the press, or rising in an illegal and rebellious manner, to enforce a parliamentary reform? for, as I have already told you, gentlemen, it would not only be commendable, but the bounden duty of every man to take arms, and resist the attempts of the executive power, if it strive to wrest from the people the liberty of the press, and trial by jury; so it would be highly criminal and rebellious to attempt a reform in parliament by forcible means, or to recommend forcible measures as a means to obtain it:—so that the question here is the same as in the third count, namely, in what case force was recommended as justifiable to be employed.

Now, to determine this question, it will be necessary to attend very minutely to the evidence. Mr. Guest says, peaceable means were to be employed to gain their ends, but if these failed, and their opponents continued obstinate, force was to be used; and being asked what their ends were? he said, universal suffrage and annual parliaments. You have been told that the word opponents, might not mean his majesty and his ministers. You will exercise your judgment on this. Mr.

Guest admits, in his cross-examination, that the parts of the speech were detached parts; and that they might have been spoken in a different order from what he has given them in evidence. The evidence of the other witness, Mr. Sutton, is not material; he does not swear positively to what was said about the soldiery, or force; but says the defendant recommended peaceable measures.

The witnesses for the defendant all uniformly agree in saying, that the words were not used as applicable to a parliamentary reform; and that Mr. Binns recommended no other than peaceable means to obtain this end. It appears, likewise, from these witnesses, that the subject of reform was more particularly treated of in the beginning of his speech, and the trial by jury, and the liberty of the press, at or near the end. It also appears, that the time in which he talked about force, and the soldiery, was near the conclusion, if you believe these witnesses. I have nothing particular to remark as to the credibility of the witnesses; there is, indeed, a remarkable coincidence in the evidence for the defendant, which the counsel for the crown has told you can only be the consequence of previous instruction. You have also been told that the witness for the crown is perjured. On all these points you are to decide according to the best of your judgment.

Gentlemen, you have now the whole of the evidence.—I shall not detain you any longer. You have two questions only to consider, first, whether the defendant said that he himself, or that his majesty was well convinced that annual parliaments and universal suffrage were most conducive to the happiness of the people, and so forth; and, secondly, whether force was recommended as a means of obtaining a parliamentary reform.

If you are of opinion that it was, or that the defendant spoke the aforesaid words concerning his majesty, you must convict him; but if not, you must give a verdict accordingly.

Gentlemen, I recommend to you to retire from court, and take time for deliberation; and when you are agreed, you may bring your verdict to my chambers, where I shall be ready to receive it.

The court was adjourned at eight o'clock (having sat twelve hours); the jury having withdrawn to the grand jury room to consider their verdict, his lordship retired to his chambers, where he was followed in about three hours by the jury, who returned a verdict of NOT GUILTY.

621. Proceedings against THOMAS WILLIAMS for publishing Paine's "Age of Reason;" tried by a Special Jury in the Court of King's-Bench at Westminster, before the Right Honourable Lloyd Lord Kenyon on the 24th day of June: 37 GEORGE III. A. D. 1797.*

INTRODUCTION.

THE Indictment was preferred by the Society for carrying into Effect his Majesty's Proclamation against Vice and Immorality. That proclamation called seriously on all ranks and descriptions of men to use their endeavours in suppressing and preventing profaneness and blasphemy, and in carrying into execution all laws in force for the punishing and suppressing of those and other vices. The subject of the prosecution is "The Age of Reason," parts the first and second;" which purports to be, "An investigation of True and Fabulous Theology."

The First Part made its appearance in the year 1794, and attracted little attention; but, in the latter end of 1795, the second part was published, and excited a general avidity to read the book, particularly among the middling and lower classes of life. Soon after the publication it was mentioned to the Society, at several of their meetings, as a most dangerous work, and they determined to watch its progress.—In the beginning of the year 1796, the very excellent Answer to it by a learned prelate, gave great hopes that the poison instilled into the minds of many of the readers would be converted to a wholesome and sober aliment, and the Society seemed to think the noisome work would of itself die away; but they were disappointed; for at the close of that year, they were informed by many of their most intelligent members, who spoke from their own knowledge, that in several widely extended parts of the kingdom—Cornwall, Nottingham, Leeds, and many other places—and even in Scotland, the work had been circulated

with more than common industry, amongst considerable bodies of people, and was producing the most pernicious effects; and that new editions were preparing and about to be published in almost every part of the country. The Society then thought themselves called upon to come forward to endeavour to suppress so dangerous a publication, and having their judgment sanctioned by the following opinion of Mr. Bayley*, they directed the prosecution to be commenced.

Mr. Bayley's Opinion.

"There can be no doubt that the pamphlet alluded to may be prosecuted at Common Law as a libel on the religion of the state. It was decided in Taylor's case, 1 Ventris 298, and 3 Keble 607, that blasphemy was not only an offence to God and religion, but a crime against the laws, state, and government; and therefore, punishable by indictment: for to say religion is a cheat, is to dissolve all those obligations whereby civil societies are preserved; and to reproach the Christian religion is to speak in subversion of the law; and the defendant was sentenced to stand three times in the pillory, to pay a fine of one thousand marks, and to find sureties for his good behaviour for life. In the King against Curl†, Strange 729, the attorney-general‡ lays it down that every publication which reflects upon religion, that great basis of civil government and society, is punishable by indictment. And he mentions an instance of a man then in custody upon a conviction for writing against the Trinity. But the case of the King against Woolston, Fitzgibbon 64, and Strange 834, is decisive. He was indicted for publishing Discourses on the Miracles of our Sa-

* Now first published, from an authentic report, obligingly communicated to me by lord Erskine.

* Now (1819) Mr. Justice Bayley.

† *Ante* Vol. 17, p. 154.

‡ Yorke, afterwards Lord Hardwicke.

viour, in which he maintained that they were not to be taken in a literal sense, but that the whole relation of the life and miracles of our Lord Christ in the New Testament, is an allegory only. The Jury found him Guilty, and, a motion being made to arrest the judgment, the Court declared they would not suffer it to be debated whether to write against Christianity in general was not an offence; but desired to be understood that they laid stress upon the word *general* because they did not intend to include disputes upon controverted points, between learned men. And lord Raymond said, Christianity in general, is parcel of the common law of England, and therefore to be protected by it. Now whatever strikes at the very root of Christianity tends manifestly to a dissolution of the civil government; so that to say an attempt to subvert the established religion is not punishable by those laws upon which it is established, is an absurdity. I would have it taken notice of, that we do not meddle about any differences in opinion, and that we interpose only where the very root of Christianity itself is struck at, as it plainly is, by this allegorical scheme: The New Testament, and the whole relation of the life and miracles of Christ being denied. Upon these authorities it is impossible to raise a question upon the pamphlet here referred to. It is a direct attack upon the whole Christian establishment; treats our Saviour as an impostor, and the prophecies and gospels as falsehoods, and the effects of priestcraft: I have, therefore, no difficulty in saying it may be indicted. But, whether it is prudent to indict it? Whether the prosecution may not make its circulation for the time more extensive? and, Whether it is not likely to die away of itself? are points upon which I can form no opinion: There can be no doubt that whatever steps will most effectually suppress the work, ought to be adopted.

“ Temple, JOHN BAYLEY.
17th Dec. 1796.

The indictment was found in Hilary Term, 1797, and the defendant's attorney having threatened to insist on the whole of the pamphlet's being read in open court, for the purpose of re-publishing it in the ac-

count of the Trial, the opinion of Mr. Bayley was again taken on this subject which opinion is as follows:

“ Every publication which has a direct tendency to debauch the morals of the people, is punishable as a libel (and that this publication has that tendency no one of common understanding can doubt); and it is no excuse that it is an authentic account of what passed in a court of justice. A court of justice, for the sake of redressing the wrongs of individuals, must go through the painful task of hearing what is unfit for the public ear; but, it by no means follows, that because it must be heard in a court of justice, it may, therefore, be published to all the world. Every blasphemous, every indecent, every seditious publication, if made the subject of prosecution, must be read at large in a court of justice, and if it were a sufficient defence for publishing the trial, that it was an accurate account of what passed, the prosecution would sanction the publication, instead of suppressing it.”

COURT OF KING'S-BENCH, JUNE 24, 1797.

Counsel for the Prosecution.—The honourable Thomas Erskine [afterwards Lord Chancellor Erskine]; William Garrow [afterwards a Baron of the Court of Exchequer]; John Bayley [afterwards one of the Justices of the Court of King's Bench].

Counsel for the Defendant.—Stewart Kyd.*

INDICTMENT stated that Thomas Williams late of the parish of Saint Giles in the county of Middlesex bookseller being a wicked impious and ill-disposed person and having no regard for the laws and religion of this realm but most wickedly blasphemously impiously and profanely devising and intending to asperse vilify and ridicule that part of the Holy Bible which is called the Old Testament on the first day of January in the year of our Lord 1796 with force and arms at Westminster in the county of Middlesex did publish and cause to be published a certain wicked false impious and blasphemous libel containing therein among other things as follows that is to say “ Whenever we read the obscene “ stories, the voluptuous debaucheries, the “ cruel and torturous executions, the unrelenting vindictiveness, with which more “ than half the Bible” (meaning that part of

* He was one of the persons indicted for High Treason in 1794, together with Hardy and Horne Tooke. See Hardy's case, *ant.*, Vol. 24, p. 199, and Tooke's case, Vol. 20, p. 745.

the Holy Bible which is called the Old Testament) "is filled, it would be more consistent that we called it" (meaning that part of the Holy Bible which is called the Old Testament) "the word of a demon than the word of God: It" (meaning that part of the Holy Bible which is called the Old Testament) "is a history of wickedness that has served to corrupt and brutalize mankind." To the great displeasure of Almighty God to the great scandal and infamy and contempt of the Holy Bible to the evil example of all others and against the peace of our said lord the king his crown and dignity.

2nd Count.—That the said Thomas Williams being a wicked impious and ill-disposed person, and having no regard to the laws or religion of this realm but most wickedly blasphemously impiously and profanely devising and intending to asperse vilify scandalize and ridicule that part of the Holy Bible which is called the Old Testament on the day and year aforesaid at Westminster aforesaid in the county aforesaid with force and arms did publish and cause to be published a certain false wicked impious and blasphemous libel containing therein among other things as follows that is to say "Did the book called the Bible" (meaning that part of the Holy Bible which is called the Old Testament) "excel in purity of ideas and expression all the books that are now extant in the world, I would not take it for my rule of faith, as being the word of God; because the possibility would nevertheless exist of my being imposed upon: But, when I see throughout the greatest part of this Book" (meaning that part of the Holy Bible which is called the Old Testament) "scarcely any thing but a history of the grossest vices, and a collection of the most paltry and contemptible tales, I cannot dishonour my Creator by calling it by his name," (meaning and intending thereby that throughout the greatest part of that part of the Holy Bible which is called the Old Testament there is scarcely any thing but a history of the grossest vices and a collection of paltry and contemptible tales) To the great displeasure of Almighty God The great scandal infamy and contempt of the Holy Bible to the evil example of all others and against the peace of our said lord the king his crown and dignity.

3rd Count.—That the said Thomas Williams being a wicked impious and ill-disposed person and having no regard to the laws or religion of this realm but wickedly blasphemously impiously and profanely devising and intending to asperse scandalize vilify and ridicule the Holy Bible and the Christian religion on the day and year aforesaid at Westminster aforesaid in the county aforesaid with force and arms did publish and cause to be published a certain false wicked impious and blasphemous libel in one part of which said libel was then and there contained according to the tenor following that is to say "To

"charge the commission of things upon the Almighty, which in their own nature, and by every rule of moral justice, are crimes, as all assassination is, and more especially the assassination of infants, is matter of serious concern. The Bible tells us that those assassinations were done by the express command of God; to believe therefore the Bible to be true, we must unbelieve all our belief in the moral justice of God, for wherein could crying or smiling infants offend? And to read the Bible without horror, we must undo every thing that is tender, sympathising, and benevolent, in the heart of man. Speaking for myself, if I" (meaning the writer of the aforesaid libel) "had no other evidence that the Bible is fabulous than the sacrifice I" (meaning the writer of the said libel) "must make to believe it to be true, that alone would be sufficient to determine my choice." And in another part of which said libel was then and there contained according to the tenor following that is to say "I have now gone through the examination of the four books ascribed to Matthew, Mark, Luke, and John" (meaning the Gospels in that part of the Holy Bible which is called the New Testament ascribed to Saint Matthew Saint Mark Saint Luke and Saint John) "and when it is considered that the whole space of time from the Crucifixion" (meaning the crucifixion of our blessed Saviour and Redeemer Jesus Christ) "to what is called the Ascension, is but a few days; apparently not more than three or four: and, that all the circumstances are reported to have happened nearly about the same spot, Jerusalem, it is I believe impossible to find in any story upon record so many and such glaring absurdities, contradictions, and falsehoods, as are in those books" (meaning thereby that there are glaring absurdities contradictions and falsehoods in those books) to the great displeasure of Almighty God to the great scandal infamy and contempt and ridicule of the Holy Bible and the Christian religion to the evil example of all others and against the peace of our said lord the king his crown and dignity.

That the said Thomas Williams being a wicked impious and evil disposed person and having no regard to the laws or religion of this realm but wickedly blasphemously impiously and profanely devising and intending to asperse vilify and ridicule that part of the Holy Bible which is called the Old Testament on the said day and year aforesaid at Westminster aforesaid in the county aforesaid with force and arms did publish and cause to be published a certain other false wicked and impious and blasphemous libel of and concerning that part of the Holy Bible which is called the Old Testament containing therein among other things as follows (that is to say) "It" (meaning that part of the Holy Bible which is called the Old Testament) "is a book of

"lies, wickedness, and blasphemy." To the great displeasure of Almighty God to the great scandal and infamy of the Holy Bible to the evil example of all others and against the peace of our said lord the king his crown and dignity.

That the said Thomas Williams being a wicked impious and evil-disposed person and having no regard to the laws or religion of this realm but wickedly impiously and blasphemously devising and intending to asperse vilify discredit and ridicule the Christian religion on the day and year aforesaid at Westminster aforesaid in the county aforesaid with force and arms did wickedly impiously and profanely publish and cause to be published a certain other wicked false impious profane blasphemous libel containing therein among other things as follows that is to say "As it is nothing extraordinary that a woman should be with child before she was married, and that therefore she might bring forth, should be executed even unjustly; I see no reason for not believing that such a woman as Mary" (meaning the blessed Virgin Mary) and such a man as Joseph, and Jesus, existed: their mere existence is a matter of indifference about which there is no ground either to believe or to disbelieve; and which comes under the common head of 'It may be so, and what then,' the probability however is, that there were such persons, or at least such as resembled them in part of the circumstances; because almost all romantic stories have been suggested by some actual circumstance; as the adventures of Robin Crusoe, not a word of which is true, were suggested by the case of Alexander Selkirk; It is not then the existence or the non-existence of the persons that I trouble myself about: It is the fable of Jesus Christ, as told in the New Testament, and the wild and visionary doctrine raised thereon, against which I contend. The story, taking it as it is told, is blasphemously obscene: It gives an account of a young woman engaged to be married, and, while under this engagement, she is, to speak plain language, debauched by a Ghost, under the impious pretence (Luke chapter the first, verse the 35th) that the Holy Ghost shall come upon thee, and the power of the Highest shall overshadow thee." To the great displeasure of Almighty God to the great scandal and infamy of the Christian religion to the evil example of all others and against the peace of our said lord the king his crown and dignity.

That the said Thomas Williams being a wicked impious and evil-disposed person and having no regard to the laws or religion of this realm but wickedly impiously and blasphemously devising and intending to asperse vilify and ridicule the Christian religion on the day and year aforesaid at Westminster aforesaid in the county aforesaid with force and arms did wickedly impiously and profanely publish and cause to be published a certain

other false wicked impious profane and blasphemous libel containing therein among other things as follows that is to say: "What is it the Testament" (meaning that part of the Holy Bible which is called the New Testament) "teaches us? To believe that the Almighty committed debauchery with a woman engaged to be married; and the belief of this debauchery is called faith." To the great displeasure of Almighty God to the great scandal infamy and contempt of the Christian religion to the evil example of all others and against the peace of our said lord the king his crown and dignity.

The defendant pleaded the general issue, *NOT GUILTY*, and thereupon issue was joined.

The Indictment was opened by Mr. Bayley.

The Hon. *Thomas Erskine*.—May it please your Lordship;—Gentlemen of the Jury; The charge of blasphemy, which is put upon the record against the publisher of this publication, is not an accusation of the servants of the Crown, but comes before you sanctioned by the oaths of a grand jury of the country.—It stood for trial upon a former day; but it happening, as it frequently does, without any imputation upon the gentlemen named in the panel, that a sufficient number did not appear to constitute a full special jury, I thought it my duty to withdraw the cause from trial, till I could have the opportunity of addressing myself to you, who were originally appointed to try it.

I pursued this course, from no jealousy of the common juries appointed by the laws for the ordinary service of the court, since my whole life has been one continued experience of their virtues; but because I thought it of great importance, that those who were to decide upon a cause so very momentous to the public, should have the highest possible qualifications for the decision; that they should not only be men, capable, from their educations, of forming an enlightened judgment, but that their situations should be such as to bring them within the full view of their country, to which, in character and in estimation, they were, in their own turns, to be responsible.

Not having the honour, gentlemen, to be sworn for the king as one of his counsel, it has fallen much oftener to my lot to defend indictments for libels, than to assist in the prosecution of them; but I feel no embarrassment from that recollection:—I shall not be found to-day to express a sentiment, or to utter an expression, inconsistent with those invaluable principles for which I have uniformly contended in the defence of others. Nothing that I have ever said, either professionally or personally, for the liberty of the press, do I mean to-day to contradict or counteract. On the contrary, I desire to preface the very short discourse I have to make to you, with reminding you, that it is your most solemn

duty to take care that it suffers no injury in your hands. A free and unlicensed press, in the just and legal sense of the expression, has led to all the blessings both of religion and government, which Great Britain or any part of the world at this moment enjoys; and it is calculated to advance mankind to still higher degrees of civilization and happiness. But this freedom, like every other, must be limited to be enjoyed, and, like every human advantage, may be defeated by its abuse.

Gentlemen, the defendant stands indicted for having published this book, which I have only read from the obligations of professional duty, and from the reading of which I rose with astonishment and disgust. Standing here with all the privileges belonging to the highest counsel for the Crown, I shall be entitled to reply to any defence that shall be made for the publication. I shall wait with patience till I hear it.

Indeed, if I were to anticipate the defence which I hear and read of, it would be defaming by anticipation the learned counsel who is to make it; since, if I am to collect it, from a formal notice given to the prosecutors in the course of the proceedings, I have to expect, that, instead of a defence conducted according to the rules and principles of English law, the foundation of all our laws, and the sanction of all justice, are to be struck at and insulted.—What gives the Court its jurisdiction? What but the oath which his lordship, as well as yourselves, have sworn upon the Gospel to fulfil? Yet in the king's Court, where his majesty is himself also sworn to administer the justice of England—in the king's Court—who receives his high authority under a solemn oath to maintain the Christian religion, as it is promulgated by God in the Holy Scriptures, I am nevertheless called upon, as counsel for the prosecution, to "produce a certain book, described in the indictment to be THE HOLY BIBLE." No man deserves to be upon the rolls, who has dared, as an attorney, to put his name to such a notice. It is an insult to the authority and dignity of the Court of which he is an officer; since it calls in question the very foundations of its jurisdiction.—If this is to be the spirit and temper of the defence; if, as I collect from that array of books which are spread upon the benches behind me, this publication is to be vindicated by an attack of all the truths which the Christian religion promulgates to mankind, let it be remembered, that such an argument was neither suggested nor justified by any thing said by me on the part of the prosecution.

In this stage of the proceedings, I shall call for reverence to the sacred Scriptures, not from their merits, unbounded as they are, but from their authority in a Christian country—not from the obligations of conscience, but from the rules of law. For my own part, gentlemen, I have been ever deeply devoted to the truths of Christianity; and my firm belief in the holy Gospel is by no means owing to the pre-

judices of education (though I was religiously educated by the best of parents), but has arisen from the fullest and most continued reflexions of my riper years and understanding. It forms at this moment the great consolation of a life, which, as a shadow, passes away; and without it, I should consider my long course of health and prosperity (too long, perhaps, and too uninterrupted to be good for any man) only as the dust which the wind scatters, and rather as a snare than as a blessing.

Much, however, as I wish to support the authority of Scripture from a reasoned consideration of it, I shall repress that subject for the present; but if the defence, as I have suspected, shall bring them at all into argument or question, I must then fulfil a duty which I owe, not only to the Court, as counsel for the prosecution, but to the public, and to the world—to state what I feel and know concerning the evidences of that religion, which is denied without being examined, and reviled without being understood.

I am well aware that, by the communications of a FREE PRESS, all the errors of mankind, from age to age, have been dissipated and dispelled; and I recollect that the world, under the banners of reformed Christianity, has struggled through persecution to the noble eminence on which it stands at this moment, shedding the blessings of humanity and science upon the nations of the earth.

It may be asked then, by what means the Reformation would have been effected, if the books of the reformers had been suppressed, and the errors of now exploded superstitions had been supported by the terrors of an unreformed state? or how, upon such principles, any reformation, civil or religious, can in future be effected? The solution is easy:—Let us examine what are the genuine principles of the liberty of the press, as they regard writings upon general subjects, unconnected with the personal reputations of private men, which are wholly foreign to the present inquiry. They are full of simplicity, and are brought as near perfection, by the law of England, as, perhaps, is attainable by any of the frail institutions of mankind.

Although every community must establish supreme authorities, founded upon fixed principles, and must give high powers to magistrates to administer laws for the preservation of government, and for the security of those who are to be protected by it;—yet, as infallibility and perfection belong neither to human individuals nor to human establishments, it ought to be the policy of all free nations, as it is most peculiarly the principle of our own, to permit the most unbounded freedom of discussion, even to the detection of errors in the constitution of the very government itself; so as that common decorum is observed, which every state must exact from its subjects, and which imposes no restraint upon any intellectual composition, fairly, honestly,

and decently addressed to the consciences and understandings of men. Upon this principle, I have an unquestionable right—a right which the best subjects have exercised—to examine the principles and structure of the constitution, and by fair, manly reasoning, to question the practice of its administrators. I have a right to consider and to point out errors in the one or in the other; and not merely to reason upon their existence, but to consider the means of their reformation.

By such free, well-intentioned, modest, and dignified communication of sentiments and opinions, all nations have been gradually improved, and milder laws and purer religions have been established. The same principles, which vindicate civil controversies, honestly directed, extend their protection to the sharpest contentions on the subject of religious faiths. This rational and legal course of improvement was recognised and ratified by lord Kenyon as the law of England, in a late trial at Guildhall,* where he looked back with gratitude to the labours of the reformers, as the fountains of our religious emancipation, and of the civil blessings that followed in their train.—The English constitution, indeed, does not stop short in the toleration of religious opinions, but liberally extends it to practice.—It permits every man, EVEN PUBLICLY, to worship God according to his own conscience, though in marked dissent from the national establishment,—so as he professes the general faith, which is the sanction of all our moral duties, and the only pledge of our submission to the system which constitutes the state.

Is not this freedom of controversy, and freedom of worship, sufficient for all the purposes of human happiness and improvement?—Can it be necessary for either, that the law should hold out indemnity to those, who wholly abjure and revile the government of their country, or the religion on which it rests for its foundation? I expect to hear, in answer to what I am now saying, much that will offend me.—My learned friend, from the difficulties of his situation, which I know, from experience, how to feel for very sincerely, may be driven to advance propositions to which it may be my duty, with much freedom, to reply;—and the law will sanction that freedom.—But will not the ends of justice be completely answered by my exercise of that right, in terms that are decent, and calculated to expose its defects?—Or will my argument suffer, or will public justice be impeded, because neither private honour and justice, nor public decorum, would endure my telling my very learned friend, because I differ from him in opinion, that he is a fool,—a liar,—and a scoundrel, in the face of the Court? This is just the distinction between a book of free legal controversy, and the book which I am arraigning before you. Every man has a

right to investigate, with decency, controversial points of the Christian religion;—but no man, consistently with a law which only exists under its sanctions, has a right to deny its very existence, and to pour forth such shocking and insulting invectives, as the lowest establishments in the gradations of civil authority ought not to be subjected to, and which soon would be borne down by insolence and disobedience, if they were.

The same principle pervades the whole system of the law, not merely in its abstract theory, but in its daily and most applauded practice.—The intercourse between the sexes, which, properly regulated, not only continues, but humanizes and adorns our natures, is the foundation of all the thousand romances, plays, and novels, which are in the hands of every body.—Some of them lead to the confirmation of every virtuous principle; others, though with the same profession, address the imagination in a manner to lead the passions into dangerous excesses; but though the law does not nicely discriminate the various shades which distinguish such works from one another, so as to suffer many to pass, through its liberal spirit, that upon principle ought to be suppressed, would it, or does it tolerate, or does any decent man contend that it ought to pass by unpunished, libels of the most shameless obscenity, manifestly pointed to debauch innocence, and to blast and poison the morals of the rising generation? This is only another illustration to demonstrate the obvious distinction between the work of an author, who fairly exercises the powers of his mind, in investigating the religion or government of any country, and him who attacks the rational existence of every religion or government, and brands with absurdity and folly the state which sanctions, and the obedient tools who cherish the delusion. But this publication appears to me to be as cruel and mischievous in its effects, as it is manifestly illegal in its principles; because it strikes at the best—sometimes, alas! the only refuge and consolation amidst the distresses and afflictions of the world. The poor and humble, whom it affects to pity, may be stabbed to the heart by it.—They have more occasion for firm hopes beyond the grave, than the rich and prosperous, who have other comforts to render life delightful.—I can conceive a distressed but virtuous man, surrounded by his children, looking up to him for bread when he has none to give them; sinking under the last day's labour, and unequal to the next,—yet still, supported by confidence in the hour when all tears shall be wiped from the eyes of affliction, bearing the burden laid upon him by a mysterious Providence which he adores, and anticipating with exultation the revealed promises of his Creator, when he shall be greater than the greatest, and happier than the happiest of mankind. What a change in such a mind might be wrought by such a merciless publication!—Gentlemen! whether

* See lord Kenyon's summing up in Mr. Reeves's case, p. 591, of this volume.

these remarks are the over-charged declamations of an accusing counsel, or the just reflexions of a man anxious for the public happiness, which is best secured by the morals of a nation, will be soon settled by an appeal to the passages in the work, that are selected by the indictment for your consideration and judgment. You are at liberty to connect them with every context and sequel, and to bestow upon them the mildest interpretation.

[Here Mr. Erskine read and commented upon several of the selected passages, and then proceeded as follows:]

Gentlemen, it would be useless and disgusting to enumerate the other passages within the scope of the indictment.—How any man can rationally vindicate the publication of such a book, in a country where the Christian religion is the very foundation of the law of the land, I am totally at a loss to conceive, and have no ideas for the discussion of.—How is a tribunal, whose whole jurisdiction is founded upon the solemn belief and practice of what is here denied as falsehood, and reprobated as impiety, to deal with such an anomalous defence?—Upon what principle is it even offered to the Court, whose authority is contemned and mocked at?—If the religion proposed to be called in question, is not previously adopted in belief and solemnly acted upon, what authority has the Court to pass any judgment at all of acquittal or condemnation?—Why am I now, or upon any other occasion, to submit to his lordship's authority?—Why am I now, or at any time, to address twelve of my equals, as I am now addressing you, with reverence and submission?—Under what sanction are the witnesses to give their evidence, without which there can be no trial?—Under what obligations can I call upon you, the jury representing your country, to administer justice?—Surely upon no other than that you are SWORN TO ADMINISTER IT UNDER THE OATHS YOU HAVE TAKEN.—The whole judicial fabric; from the king's sovereign authority to the lowest office of magistracy, has no other foundation.—The whole is built, both in form and substance, upon the same oath of every one of its ministers to do justice, AS GOD SHALL HELP THEM HEREAFTER. WHAT GOD? AND WHAT HEREAFTER? That God, undoubtedly, who has commanded kings to rule, and judges to decree justice;—who has said to witnesses, not only by the voice of nature, but in revealed commandments—THOU SHALT NOT BEAR FALSE TESTIMONY AGAINST THY NEIGHBOUR; and who has enforced obedience to them by the revelation of the unutterable blessings which shall attend their observance, and the awful punishments which shall await upon their transgression.

But it seems this is an AGE OF REASON, and the time and the person are at last arrived, that are to dissipate the errors which have overspread the past generations of ignorance.—The believers in Christianity are many, but

it belongs to the few that are wise to correct their credulity.—Belief is an act of reason, and superior reason may, therefore, dictate to the weak. In running the mind over the long list of sincere and devout Christians, I cannot help lamenting, that Newton had not lived to this day, to have had his shallowness filled up with this new flood of light.—But the subject is too awful for irony.—I will speak plainly and directly. Newton was a Christian!—Newton, whose mind burst forth from the fetters fastened by nature upon our finite conceptions;—Newton, whose science was truth, and the foundation of whose knowledge of it was philosophy—not those visionary and arrogant presumptions, which too often usurp its name, but philosophy resting upon the basis of mathematics, which, like figures, cannot lie;—Newton, who carried the line and rule to the uttermost barriers of creation, and explored the principles by which all created matter exists, and is held together. But this extraordinary man, in the mighty reach of his mind, overlooked, perhaps, the errors, which a minuter investigation of the created things on this earth might have taught him.—What shall then be said of the great Mr. Boyle, who looked into the organic structure of all matter, even to the inanimate substances which the foot treads upon?—Such a man may be supposed to have been equally qualified with Mr. Paine to look up through nature to nature's God; yet the result of all his contemplations was, the most confirmed and devout belief in all which the other holds in contempt, as despicable and drivelling superstition.—But this error might, perhaps, arise from a want of due attention to the foundations of human judgment, and the structure of that understanding which God has given us for the investigation of truth.—Let that question be answered by Mr. Locke, who, to the highest pitch of devotion and adoration, was a Christian.—Mr. Locke, whose office was, to detect the errors of thinking, by going up to the very fountains of thought, and to direct into the proper track of reasoning, the devious mind of man, by showing him its whole process, from the first perceptions of sense to the last conclusions of ratiocination;—putting a rein upon false opinion, by practical rules for the conduct of human judgment.

But these men, it may be said, were only deep thinkers, and lived in their closets, unaccustomed to the traffic of the world, and to the laws which practically regulate mankind. Gentlemen! in the place where we now sit to administer the justice of this great country, the never-to-be-forgotten sir Matthew Hale presided;—whose faith in Christianity is an exalted commentary upon its truth and reason, and whose life was a glorious example of its fruits;—whose justice, drawn from the pure fountain of the Christian dispensation, will be, in all ages, a subject of the highest reverence and admiration. But it is said by the

author, that the Christian fable is but the tale of the more ancient superstitions of the world, and may be easily detected by a proper understanding of the mythologies of the Heathens.—Did Milton understand those mythologies?—Was HE less versed than Mr. Paine in the superstitions of the world? no,—they were the subject of his immortal song; and though shut out from all recurrence to them, he poured them forth from the stores of a memory rich with all that man ever knew, and laid them in their order as the illustration of real and exalted faith, the unquestionable source of that fervid genius, which has cast a kind of shade upon most of the other works of man—

He pass'd the flaming bounds of place and time :
The living throne, the sapphire blaze,
Where angels tremble while they gaze,
He saw,—but, blasted with excess of light,
Close'd his eyes in endless night.

But it was the light of the BODY only that was extinguished : “The CELESTIAL LIGHT shone inward, and enabled him to justify the ways of God to man.”—The result of *his* thinking was nevertheless not quite the same as the author's before us. The mysterious incarnation of our blessed saviour (which this work blasphemes in words so wholly unfit for the mouth of a christian, or for the ear of a court of justice, that I dare not, and will not, give them utterance) Milton made the grand conclusion of his *Paradise Lost*, the rest from his finished labours, and the ultimate hope, expectation and glory of the world.

A Virgin is his mother, but his sire,
The power of the most high ;—he shall ascend
The throne hereditary, and bound his reign
With earth's wide bounds, his glory with the heavens.

The immortal poet having thus put into the mouth of the angel the prophecy of man's redemption, follows it with that solemn and beautiful admonition, addressed in the poem to our great first parent, but intended as an address to his posterity through all generations :

This having learn'd, thou hast attain'd the sum
Of wisdom ; hope no higher, though all the stars
Thou knew'st by name, and all th' ethereal powers,
All secrets of the deep, all nature's works,
Or works of God in heaven, air, earth, or sea,
And all the riches of this world enjoy'st,
And all the rule, one empire ; only add
Deeds to thy knowledge answerable, add faith,
Add virtue, patience, temperance, add love,
By name to come call'd *charity*, the soul
Of all the rest : then wilt thou not be loth
To leave this paradise, but shalt possess
A paradise within thee, happier far.

Thus you find all that is great or wise, or splendid, or illustrious, amongst created beings ;—all the minds gifted beyond ordinary nature, if not inspired by its universal Author for the advancement and dignity of the world, though divided by distant ages, and by clashing opinions, yet joining as it were in one sublime

chorus, to celebrate the truths of Christianity ; laying upon its holy altars the never-fading offerings of their immortal wisdom.

Against all this concurring testimony, we find suddenly, from the author of this book, that the Bible teaches nothing but “LIES, OBSCENITY, CRUELTY, and INJUSTICE.” Had he ever read our Saviour's sermon on the Mount, in which the great principles of our faith and duty are summed up?—Let us all but read and practise it ; and lies, obscenity, cruelty and injustice, and all human wickedness, will be banished from the world !

Gentlemen, there is but one consideration more, which I cannot possibly omit, because I confess it affects me very deeply.—The author of this book has written largely on public liberty and government ; and this last performance, which I am now prosecuting, has, on that account, been more widely circulated, and principally among those who attached themselves from principle to his former works.—This circumstance renders a public attack upon *all revealed religion* from such a writer infinitely more dangerous. The religious and moral sense of the people of Great Britain is the great anchor, which alone can hold the vessel of the state amidst the storms which agitate the world ; and if the mass of the people were debauched from the principles of religion ;—the true basis of that humanity, charity, and benevolence, which have been so long the national characteristic ; instead of mixing myself, as I sometimes have done, in political reformations, I would retire to the uttermost corners of the earth, to avoid their agitation ; and would bear, not only the imperfections and abuses complained of in our own wise establishment, but even the worst government that ever existed in the world, rather than go to the work of reformation with a multitude set free from all the charities of Christianity, who had no other sense of God's existence, than was to be collected from Mr. Paine's observation of nature, which the mass of mankind have no leisure to contemplate ; which promises no future rewards to animate the good in the glorious pursuit of human happiness, nor punishments to deter the wicked from destroying it even in its birth.—The people of England are a religious people, and, with the blessing of God, so far as it is in my power, I will lend my aid to keep them so.

I have no objections to the most extended and free discussions upon doctrinal points of the christian religion ; and *though the law of England does not permit it*, I do not dread the reasonings of Deists against the existence of Christianity itself, because, as was said by its divine Author, if it be of God it will stand. An intellectual book, however erroneous, addressed to the intellectual world upon so profound and complicated a subject, can never work the mischief which this indictment is calculated to repress.—Such works will only incite the minds of men enlightened by study

to a closer investigation of a subject well worthy of their deepest and continued contemplation.—The powers of the mind are given for human improvement in the progress of human existence.—The changes produced by such reciprocations of lights and intelligences are certain in their progression, and make their way imperceptibly, by the final and irresistible power of truth.—If Christianity be founded in falsehood, let us become deists in this manner, and I am contented.—But this book has no such object, and no such capacity:—it presents no arguments to the wise and enlightened; on the contrary, it treats the faith and opinions of the wisest with the most shocking contempt, and stirs up men, without the advantages of learning, or sober thinking, to a total disbelief of every thing hitherto held sacred; and consequently to a rejection of all the laws and ordinances of the state, which stand only upon the assumption of their truth.

Gentlemen, I cannot conclude without expressing the deepest regret at all attacks upon the christian religion by authors who profess to promote the civil liberties of the world.—For under what other auspices than Christianity have the lost and subverted liberties of mankind in former ages been re-asserted?—By what zeal, but the warm zeal of devout christians, have English liberties been redeemed and consecrated?—Under what other sanctions, even in our own days, have liberty and happiness been spreading to the uttermost corners of the earth?—What work of civilization, what commonwealth of greatness, has this bald religion of nature ever established?—We see, on the contrary, the nations that have no other light than that of nature to direct them, sunk in barbarism, or slaves to arbitrary governments; whilst under the christian dispensation, the great career of the world has been slowly, but clearly advancing,—lighter at every step, from the encouraging prophecies of the gospel, and leading, I trust, in the end, to universal and eternal happiness. Each generation of mankind can see but a few revolving links of this mighty and mysterious chain; but by doing our several duties in our allotted stations, we are sure that we are fulfilling the purposes of our existence.—You, I trust, will fulfil yours this day.

EVIDENCE FOR THE PROSECUTION.

Curtis Augustus Fleming sworn.—Examined by *Mr. Garrow*.

I believe, *Mr. Fleming*, you are now one of the clerks in the Bank of England?—Yes, I am.

At the time when the transaction took place, about which I am going to examine you, you were clerk to *Mr. Smythe*, solicitor for this prosecution?—I was.

Did you at any time and when, sir, go to the shop of the defendant *Thomas Williams*?—Yes, I did.

When was it?—It was the 7th of February, 1797.

Was it the 7th or 17th?—The 7th.

Where is that shop situate?—In little Turnstile, Holborn.

I ask you first, a little out of order, before you went away, did you see the defendant himself?—I did.

Now when you first went in whom did you find in the shop, and what passed?—I found a woman in the shop, and I asked her for the book, "The Age of Reason;" she told me she would call *Mr. Williams* down stairs; she did not know she had any of them bound up: she called him down, and he came. I asked for that book, and *Mr. Williams* gave me this.

In what shape was it when he first produced it?—It was not then sewed together, and not in sheets.

How not in sheets: was it folded?—Yes, it was.

But not stitched?—No.

Did he give any directions about the book before it was delivered to you?—To the woman in the shop: he desired her to stitch it together.

Did you pay for it?—I did.

What sum did you pay for it?—One shilling.

Did he deliver it to you, or the woman in his presence?—He delivered it to me.

Is that the identical book that you purchased of him in the manner it is stated?—It is. I marked it: my name is on it: I wrote the day of the month the same day.

[Delivered it in.]

[Here *Mr. Lowten* read some of the passages recited in the indictment.]

Mr. Garrow.—My lord, I really think we might spare the Court and Jury the pain of hearing this read.

Lord Kenyon.—To me, who am a christian, to be sure it is shocking, perfectly shocking!

Mr. Garrow.—We certainly will not read this passage, for it is impossible to look at it, in private, without horror.

Robert Smythe, sworn.

Look at that. You were served with that notice?—Yes, sir, I was.

Mr. Garrow.—Put it in, *Mr. Smythe*.

Lord Kenyon.—Who served you with it?—A clerk of *Mr. Martin's*.

[Read.]

In the King's-bench

The King against *Thomas Williams* for Blasphemy.

Take notice that the prosecutors of the indictment against the above-named defendant will upon the trial of this cause be required

to produce a certain book described in the said indictment to be the Holy Bible.

Dated the 17th day of June, 1797.

JOHN MARTIN,*

Solicitor for the defendant.

To Messieurs Grave and Vines,
Agents for the Prosecutors."

Lord Kenyon.—Is the solicitor for the defendant in court? Does he avow that notice?

Mr. Martin.—I certainly, sir, cannot deny it.

Mr. Erskine.—That is our case my lord.

DEFENCE.

Mr. Stewart Kyd.—Gentlemen of the Jury: The charge against the defendant is, no doubt, as the learned counsel who conducts the prosecution has stated it to be, a serious and important one. Serious and important as it is, the defendant has entrusted to me the duty of defending him against it; a duty which while I endeavour to discharge, with full attention to the respect that is due to the dignity of this Court, and with that decent and unaffected seriousness which I feel belongs to the subject, I have no doubt I shall be favoured with a patient and impartial hearing, both from his lordship and from you.

Gentlemen, though I have undertaken to defend this man from the penal consequences which it is sought to attach to the publication of the pamphlets which contain the passages you have heard read; and though I now avow that in my conscience I think my defence of him ought to be attended with success, yet I think it proper, in this early period of my address to you, and indeed Mr. Erskine has in effect called upon me to apprise you, that it is not of course that I should have undertaken to maintain the truth of every assertion contained in those passages, or to assert the correctness of the reasoning, or the justness of every conclusion drawn from the facts alleged, or the arguments stated in the publication. On such a plan I believe it would be impossible to defend any book that was ever written, on the subjects of religion, or politics, metaphysics, or morals; or on any subject which in its nature is not susceptible of strict and absolute demonstration. On such a plan I would not, speaking for myself, undertake to defend even the excellent answer of the bishop of Landaff, to part of the very publication which is the subject

of the present prosecution, nor the answer of the same learned prelate to the fifteenth and sixteenth chapters of Mr. Gibbon's Roman History.

Gentlemen, I wish it to be distinctly understood, that I do not appear here to day in the character of a theological disputant, whose object it might be to maintain the truth of one system of religious tenets, or to arraign the falsehood of another: that I do not present myself before you as a deist, prepared to deny the truth of revealed religion; to impeach the authority of the Bible, or to justify, in the strict sense of the word, the attack made upon it by the publication which is the object of the present prosecution: but, that I stand here, an advocate in an English court of justice, to assert and to maintain, what I shall ever confidently and proudly maintain, the right of every individual, fairly and honestly to discuss a subject confessedly of the first importance to mankind, and to publish to the world the result of his enquiries thus honestly and fairly made; whether that result be right or wrong; in favour of the prevailing system, or against it.

Gentlemen, in all prosecutions for libel the charge against the defendant consists of two component parts; the fact of writing, printing, or publishing, and the intention with which he writes, prints, or publishes; the fact is always the object of testimony; the intention too may sometimes be the object of testimony, and may be collected from circumstances and facts extrinsic to the work which is the object of prosecution; but it is generally to be collected from the tenor and substance of the work itself. The mere fact of publication is, in itself, no crime; if it were the defendant might as well be found guilty of publishing a libel of any description which legal ingenuity might suggest—for having published the Bible, as for having published the "Age of Reason." But, whatever may formerly have been held to be the law on this subject, we owe it to the great talents and unwearied exertions of my learned friend who conducts the present prosecution, that it is now happily established that from the mere fact of publication a jury are not to convict: they are to look, not only to the nature of the publication, its composition and its spirit, but to the intention of the defendant; whether he be the author or publisher; and from their opinion of the moral guilt or innocence of that intention, to convict or to acquit. In the present case, the fact of publication is proved; the only object, therefore, of every address to you, is the guilt or innocence of the intention.

Gentlemen, in most prosecutions for libel the language in which the defendant's intention is charged, in the instrument of accusation, is plain and intelligible to common understandings; incapable of admitting different meanings, according to the different principles of the persons who read it. This ob-

* This man had been imprisoned for several months in the years 1794 and 1795, under a charge of high treason. He had been tried for a libel by a special jury and acquitted, and had been committed by the court of King's-bench into the custody of the marshal in consequence of his misconduct in a case in which he acted as an attorney. He published some particulars relating to these different transactions, in a pamphlet intitled "An Account of the Proceedings on a charge of High Treason against John Martin." London, 1795.

servation is far from being applicable to the present case, as you will see from an examination of the terms; they are these:—"blasphemously, impiously, and profanely."—Gentlemen, I would on no occasion choose to occupy your time by an ostentatious and useless display of learning; much less would I attempt it on an occasion so serious, and so solemn as the present. I hope, therefore, no such intention will be imputed to me, from my endeavouring to fix the exact and original meaning of these terms. I feel it necessary to the full performance of my duty to my client. "Blasphemously" is derived from two Greek words, which signify, "to hurt, to injure, or to wound, the fame, character, reputation, or good opinion;"—"blasphemously," therefore, means "with an intention to hurt, to injure, or to wound, the fame, character, reputation or good opinion." "Profanely" is derived more immediately from a Latin word which signifies "a sacred place, a place set apart for the local worship of some divinity; a place where the favoured votaries may be received to a more immediate communication with the object of their adoration: in the language of ancient legends a *fane*." "Profane," when applied to place, comprehends all that is not thus considered as holy ground: when applied to men it is considered as a term of reproach; implying that they are unworthy to approach the sacred spot; unworthy to have communication with the favoured votaries:—to do any thing "profanely," therefore, is to do it "in a manner, or with an intention to offend that which is esteemed holy;" or, as all subordinate divinities are now banished from hence, "in a manner, or with an intention to offend the one supreme God." "Impiously" is derived from the Latin word *pius*, which expresses the attachment, affection, respect, or reverence which is due from man to some other being to whom he stands in the relation of an inferior; as between a son and a father, it expresses filial affection; as between a man and the Deity, it expresses the constant and habitual reverence due from the former to the latter; to do any thing "impiously," therefore, is to do it "in a manner, or with an intention inconsistent with that reverence which is due from a man to his Creator."

It is plain, therefore, that according to the different systems of religious opinions which men embrace, they will apply the epithets of blasphemous, impious and profane, reciprocally to each other, and frequently, I will venture to say, with equal justice.

I will now crave your indulgence while I illustrate these observations, by examples from ancient history. The ancient Persians, who acknowledged only one supreme invisible God, worshipped the fire and the sun, indeed, as his emblems or representatives; but they thought it impious to confine the Deity, one of whose attributes was omnipresence, to one particular place, and, therefore, they had

no temples. Cambyzes, when he invaded Egypt, destroyed the temples which he found dedicated to the worship of the sacred animals, and reproached the Egyptians as impious and profane, for worshipping a bull, a cat, or an onion; the Egyptians, on the other hand, reproached him, in the same terms, for violating the objects of their religious adoration. When Xerxes invaded Greece, pursuing in like manner the spirit of his own religion, he destroyed the Grecian temples, and reproached the Greeks with impiety and profaneness, in pretending to confine the Deity to a local habitation. The Greeks, on the contrary, reproached him as impious and profane, for destroying their temples; the indignation which they felt from this cause, contributed, perhaps, more than any other to produce those wonderful efforts in defence of their country, which adorn the pages of the historian of that day. A Christian might call a Turk blasphemous, impious and profane, for maintaining the divine mission of Mohammed, and ascribing his actions to the immediate influence of God. The Turk would speak of the Christian in the same terms, for denying that mission, disputing the divine authority of the Koran, and ridiculing and reviling its doctrines. The promoters of the present prosecution assume it as a first principle, which must not be controverted or discussed, that the Bible was written under the immediate direction or authority of the Deity, and that it contains the special revelation of his will to mankind. They will, therefore, justly, according to that assumed principle, brand with the epithets of blasphemous, impious, and profane, the man who shall doubt the authenticity of the Bible, deny that it contains the word of God, or speak of it in a disrespectful or irreverent manner. On the other hand, the author of the work now under prosecution, and others of similar opinions, assuming the right of exercising their reason on all subjects, claiming to be the arbiters of their own faith, and having formed their own ideas of the justice, benevolence, and other attributes of God, from the uncontrolled exercise of that reason in the contemplation of his works, assert the right of examining by the standard of those ideas, any book that is presented to them as containing the oracles of God, and having been written under his immediate inspiration. If, therefore, they think, they find any thing in this book which attributes to the Deity things inconsistent with their preconceived ideas of his dignity, they will call those blasphemous, impious and profane, who shall assert this book to be the word of God, and that the actions related in it were done by his immediate direction. I think, therefore, gentlemen, I have delivered myself from the necessity of showing that the intention was not blasphemous, impious or profane.

The real question is not, whether you or his lordship approve the book? Not whether

you condemn the passages selected from it, and inserted in this indictment, or any part of it? Not whether you are of the same opinion with the author; but *whether at the time when he wrote the book he felt as he wrote, and expressed himself as he felt?* WHETHER HE MEANT SERIOUSLY TO EXAMINE AN IMPORTANT SUBJECT AND TO SUBMIT HIS THOUGHTS ON IT TO THE WORLD, WITHOUT A WANTON AND MALEVOLENT INTENTION TO DO MISCHIEF? If this was his object, and I think it is impossible to prove the contrary, I have the respectable authority of the bishop of Landaff for saying that the author ought not, and of course the publisher ought not to be amenable to a human tribunal. I have his authority for saying more; I have his authority for saying that it is not for any human tribunal to sit in judgment on the *intention* with which a man writes or publishes what he writes, on such subjects. In his Answer to the "Age of Reason," page 10, the bishop expresses himself thus:—"If you have made the best examination you can, and yet reject revealed religion as an imposture, I pray that God may pardon what I esteem your error." You observe, gentlemen, this learned and candid bishop does not take upon himself to condemn as absolutely and *certainly* false, the conclusions drawn by the author of this work; he supposes it possible that they may be just; he expresses with becoming modesty, his opinion that they are erroneous, but he leaves it to the Author of all truth to pardon the author, if they be. He continues thus: "And whether you have made this examination or not, does not become *me* or any man to determine." In another work of the same learned prelate, I mean his Answer to Mr. Gibbon, he avows the same liberal sentiments; he introduces himself to Mr. Gibbon in these words:—"It would give me much uneasiness to be reputed an enemy to free inquiry in religious matters, or as capable of being animated into any degree of personal malevolence, against those who differ from me in opinion. On the contrary, I look upon the right of private judgment, in every concern respecting God and ourselves, as superior to the controul of human authority; and have ever regarded free disquisition as the best mean of illustrating the doctrine, and establishing the truth of Christianity. Let the followers of Mahomet, and the zealots of the church of Rome, support their several religious systems, by damping every effort of the human intellect to pry into the foundations of their faith; but never can it become a *Christian* to be afraid of being asked a reason of the faith that is in him; nor a *Protestant* to be studious of enveloping his religion in mystery and ignorance; nor the *Church of England*, to abandon that moderation by which she permits every individual, *et sentire quæ velit, et quæ sentiat dicere.*"

Gentlemen, I have the authority of another great man to the same effect; a

man to whom the Christian religion is more indebted than to any other, since the days of St. Paul; I mean Dr. Lardner.—A Mr. Woolston had published some discourses on the miracles of our Saviour, in which he had used language of a very offensive and irreverend nature; he had been tried for blasphemy, and had been convicted: he published a defence of his discourses, in which he speaks of something of which he had heard as an intended reply, using these words:—"which by way of such a reply I should be glad to see handled."—Dr. Lardner published an answer to Mr. Woolston's fifth discourse; in his preface to this Answer, vol. 2, page 2, he says—"If by the expression, 'by way of such a reply,' he means a reply without abusive railing terms, or *invoking the aid of the civil magistrate*, I have done it in that way; I wish Mr. Woolston no harm; I only wish him a sincere conviction, and profession of the truth, effected and brought about by solid reasons and arguments, *without pains or penalties.*" In page 6, of the same Preface, he observes, "that some Christians being of opinion that Christ's kingdom is not of this world, and that it is his pleasure that men should not be compelled to receive his law by the punishments of this life, or the fear of them, leave men to propose their doubts and objections in their own way; that others have openly declared, that they ought to be *invited*, and others that they ought to be *permitted*, to propose their objections, *provided it be done in a grave and serious manner.*"—Dr. Waddington, then bishop of Chichester, in a letter to Dr. Lardner, though he pays the latter great compliments for his answer to Woolston, yet expresses his disapprobation of these passages in the preface; in reply to which, the doctor addresses the bishop to this effect, vol. 1, page 117:—"I believe that when I wrote those expressions, I had no regard to a demand made by any one, of a punishment on Mr. Woolston for his writings; I only intended to disown, in plain terms, which might not be mistaken, the principles of persecution, which he had charged upon so many of his adversaries. As when I mentioned a reply without abusive terms, I had no reference to any reply written in that way; so, when I wished his conviction without pains and penalties, I had no reference to any demand made of them. But I do own, that in the first paragraph, I had a reference to a demand which I thought had been made for punishing him for his writings. And I suppose, if he should be punished, it will be for writing *against* Christianity, and not for his *manner* of doing it. I am far from thinking, that Mr. Woolston has written in a grave and serious manner; and I have strongly expressed my *dislike* of his manner. Your lordship freely declares, he ought not to be punished for being an infidel, nor for writing at all against the Christian reli-

"gion, which appears to me a noble declaration. If the governors of the church, and civil magistrates, had all along acted up to this principle, I think the Christian religion had been, before now, well nigh universal. But I have supposed it to be a consequence from this sentiment, that if men have an allowance to write against the Christian religion, there must be also considerable indulgence as to the manner likewise. This has appeared to me a part of that meekness and forbearance, to which the Christian religion obliges us, who are to reprove, rebuke, and exhort, with all long suffering. The proper punishment of a low, mean, indecent, scurrilous way of writing, seems to be neglect, contempt, scorn, and general indignation. Your lordship has observed, extremely well, that this way of writing is such as may justly raise the indignation and resentment of every honest man, whether Christian or not. This punishment he has already had in part, and will probably have more and more, if he should go on in his rude and brutal way of writing. And if we leave all farther punishment to Him to whom vengeance belongs, I have thought it might be much for the honour of ourselves, and of our religion. But if he should be punished farther, the stream of resentment and indignation will turn; especially if the punishment should be severe; and it is likely that a small punishment will not suffice to engage to silence, nor to an alteration of the manner of writing."

Gentlemen, you observe these learned persons (and I could cite many more opinions to the same purpose) speak in favour of a much greater latitude of liberty, in writing on subjects of religious controversy, than I think I have at present any occasion to require. They tell you, no human tribunal ought to interpose; that even the *intention* of the writer ought not to be brought under the cognizance of the civil magistrate. All that I have at present to contend is, that no malevolent intention can be fairly imputed to the author of this publication. I shall argue this from the publication itself, which, in many parts of it, speaks in terms of the most reverential awe of the great Author of the universe, in terms the most respectful of the character of the Founder of the Christian religion, and of the moral doctrines which he taught; and I defy the most active industry of my learned friend to find a single passage in the whole work, inconsistent with the most chaste, the most correct system of morals. The first passage I shall read to you is, the author's profession of faith, at the bottom of the first page:—"I believe in one God, and no more; and I hope for happiness beyond this life. I believe the equality of man, and I believe that religious duties consist in doing justice, loving mercy, and endeavouring to make our fellow-creatures happy."—The next begins at the bottom of page 8. The author, after having

described what he calls the Christian mythology, proceeds in these words:—"That many good men may have believed this strange fable, and lived very good lives under that belief (for credulity is not a crime), is what I have no doubt of. In the first place, they were educated to believe it, and they would have believed any thing else in the same manner. There are also many who have been so enthusiastically enraptured, by what they conceived to be the infinite love of God to man, in making a sacrifice of himself, that the vehemence of the idea has forbidden, and deterred them from examining into the absurdity and profaneness of the story. The more unnatural any thing is, the more it is capable of becoming the object of dismal adoration. But, if objects for gratitude and admiration are our desire, do they not present themselves every hour to our eyes? Do we not see a fair creation prepared to receive us the instant we are born—a world furnished to our hands that costs us nothing? Is it we that light up the sun: that pour down the rain, and fill the earth with abundance? Whether we sleep or wake, the vast machinery of the universe still goes on. Are these things, and the blessings they indicate in future, nothing to us? Can our gross feelings be excited by no other subjects than tragedy and suicide? Or is the gloomy pride of man become so intolerable, that nothing can flatter it but a sacrifice of the Creator?"

The next passage with which I shall trouble you, explains the author's ideas as to revelation and the word of God, page 16—"But some perhaps will say, are we to have no word of God? No revelation? I answer, yes. There is a word of God; there is a revelation. The word of God is the creation we behold; and it is in this, which no human invention can counterfeit or alter, that God speaketh universally to man: human language is local and changeable, and is therefore incapable of being used as the means of unchangeable and universal information. The idea that God sent Jesus Christ to publish, as they say, the glad tidings to all nations, from one end of the earth to the other, is consistent only with the ignorance of those who know nothing of the extent of the world, and who believed as those world-saviours believed, and continued to believe for several centuries, and that in contradiction to the discoveries of philosophers, and the experience of navigators, that the earth was flat like a trencher, and that a man might walk to the end of it. But how was Jesus Christ to make any thing known to all nations? He could speak but one language, which was Hebrew, and there are in the world several hundred languages. Scarcely any two nations speak the same language, or understand each other; and as to translations, every man who knows any thing of languages, knows that it is

"impossible to translate from one language into another, not only without the danger of losing a great part of the original, but frequently of mistaking the sense; and, beside all this, the art of printing was wholly unknown at the time in which Christ lived. —It is always necessary that the means which are to accomplish any end, be equal to the accomplishment of that end, or the end cannot be accomplished. It is in this that the difference between finite and infinite power and wisdom discovers itself. Man frequently fails in accomplishing his ends, from the natural inability of the power to effect the purpose; and frequently from the want of wisdom to apply power properly. But it is impossible for infinite power and wisdom to fail as man faileth. The means it useth are always equal to the end; but human language, especially as there is not an universal language, is incapable of being used as a universal means of unchangeable and universal information; and, therefore, it is not the means that God useth in manifesting himself universally to man. It is only in the creation that all our ideas and conceptions of a word of God can unite. The creation speaketh a universal language, independently of human speech, or human language, multiplied and various as they be. It is an ever-existing original, which every man can read. It cannot be forged; it cannot be counterfeited; it cannot be lost; it cannot be altered; it cannot be suppressed. It does not depend upon the will of man, whether it shall be published or not; it publishes itself from one end of the earth to the other. It preaches to all nations and to all worlds; and this word of God reveals to man all that is necessary for man to know of God. Do we want to contemplate his power?—We see it in the immensity of the creation. Do we want to contemplate his wisdom?—We see it in the unchangeable order by which the incomprehensible whole is governed. Do we want to contemplate his munificence?—We see it in the abundance with which he fills the earth. Do we want to contemplate his mercy?—We see it in his not withholding, that abundance, even from the unthankful. In fine, do we want to know what God is? —Search not the book called the Scripture, which any human hand might make, but the Scriptures called the creation.—The only idea man can affix to the name of God, is that of a first cause, the cause of all things. And incomprehensibly difficult as it is for a man to conceive what a first cause is, he arrives at the belief of it, from the ten-fold greater difficulty of disbelieving it. It is difficult beyond description to conceive that space can have no end, but it is more difficult to conceive an end. It is difficult beyond the power of man to conceive an eternal duration of what we call time; but it is more impossible to conceive a time when

"there shall be no time. In like manner of reasoning, every thing we behold, carries in itself the internal evidence, that it did not make itself. Every man is an evidence to himself that he did *not* make himself; neither could his father make himself, nor his grandfather, nor any of his race: neither could any tree, plant, or animal, make itself; and it is the conviction arising from this evidence that carries us on, as it were, by necessity to the belief of a first cause eternally existing, of a nature totally different from any material existence we know of, and by the power of which all things exist, and this first cause man calls God. It is only by the exercise of reason, that man can discover God. Take away that reason, and he would be incapable of understanding any thing; and in this case, it would be just as consistent to read even the book called the Bible, to a horse as to a man. How then is it that those people pretend to reject reason?"

Gentlemen, I might read a great many *other* passages to prove the truth of my assertion, that the author expresses the most reverential awe of the Great Author of the universe; but that I may not fatigue your attention, I will barely cite the passages. You will have an opportunity, if you shall think fit to retire, of reading the passages at your leisure: they are pages 18, 19, 22, 103, and 104.

To prove the truth of my proposition, that the author "expresses himself in terms the most respectful of the character of the founder of the Christian religion," I shall trouble you to hear me read only two passages: The author having endeavoured to show—with what success it is not for me to say, nor is it material to the question you are to decide—That the theory of the Christian church was borrowed from the Heathen mythology, proceeds thus: page 6,—"Nothing that is here said can apply even with the most distant disrespect to the real character of Jesus Christ. He was a virtuous and an amiable man. The morality which he preached and practised was of the most benevolent kind; and though similar systems of morality had been preached by Confucius, and by some of the Greek philosophers many years before, by the Quakers since, and by many good men in all ages, it has not been exceeded by any."—Again he says, page 7, "That such a person as Jesus Christ existed, and that he was crucified, which was the mode of execution at that day, are historical relations strictly within the limits of probability. He preached most excellent morality, and the equality of man; but he preached also against the corruptions and avarice of the Jewish priests, and this brought upon him the hatred and vengeance of the whole order of priesthood. The accusations which those priests brought against him, were that of sedition, and conspiracy against the Roman government, to which

"the Jews were then subject and tributary: and it is not improbable that the Roman government might have some secret apprehension of the effects of his doctrine, as well as the Jewish priests, neither is it improbable that Jesus Christ had in contemplation the delivery of the Jewish nation from the bondage of the Romans. Between the two, however, this virtuous reformer and revolutionist lost his life."

Gentlemen, I have said I defy my learned friend to find a single passage in the whole work inconsistent with the most chaste, the most correct system of morals. I will now go farther; I will venture to assert that some of the very passages selected for prosecution, four out of the five that have been read in evidence afford the strongest proofs of the chastity of the author's mind, of the benevolence of his heart, of the general philanthropy of his disposition, and of the correctness of his moral sense.—He may be wrong, and I do not feel it incumbent on me to argue that he is right, in drawing the conclusions, that he does, against the authenticity of the Bible as containing the word of God.—If he be wrong, his error is involuntary, it is the erroneous application of principles, honestly assumed as the foundation of his reasoning: it is an error which proceeds not from the wickedness and corruption of his heart. The first passage runs in these words, "When we read the obscene stories, the voluptuous debaucheries, the cruel and torturous executions, the unrelenting vindictiveness with which more than half the Bible is filled, it would be more consistent that we called it the word of a demon, than the word of God." "It is a history of wickedness that has served to corrupt and brutalize mankind." page 10.

Gentlemen, this sentence, though not in form, yet in effect, consists of two parts, an assertion of fact, and a conclusion from that assertion: The assertion is, that there are in the Bible obscene stories, descriptions of voluptuous debaucheries, relations of cruel and torturous executions, and unrelenting vindictiveness; the conclusion is, that it were more consistent to call the Bible, the word of a demon, than the word of God: that it is a history of wickedness that has served to corrupt and to brutalize mankind.—On the supposition that the assertion is true, I do not mean, nor is it incumbent on me, to contend, that the conclusion is correct; it is enough for my purpose, that a man of good sense and common understanding, unaffected by the prejudices of education, sitting down with a fair and honest intention to investigate the truth, might without subjecting himself, in the sober eye of reason, to the imputation of a wicked and malevolent intention, have drawn the same conclusion from the same premises.

Gentlemen, I should be guilty of blasphemy against you, if I could for a moment suppose that you had not all of you read the Bible; it

is impossible that any of you should have so imperfect a sense of the duty you were called upon to discharge, as to come here to sit in judgment on the defendant without that previous qualification. Taking for granted, therefore, what must thus necessarily be true, that you have read the Bible, I appeal to your own recollection, I ask you as fair and impartial men, whether you have not read in that book, stories, which, if found in any other book, you would justly have denominated obscene, descriptions which, if found in any other book, might fairly be termed descriptions of voluptuous debaucheries; relations of transactions described as having taken place under the immediate direction of the Deity, which, if you had found them in any other book, you would have called by the name of cruel and torturous executions, and considered as examples of unrelenting vindictiveness.

Gentlemen, when I began to prepare myself for this defence, I did intend to read to you from the Bible, several passages, to which, from the recollection of former reading, I supposed the author might have alluded, when he wrote this sentence; but when I read anew some of those which might be ranked under the class of obscene stories, and voluptuous debaucheries, I found the impression made in early youth, had been considerably effaced by time, and I now feel it my duty to spare the modest ears of an English audience, and not to read them; but to assist your recollection, I will take the liberty of citing to you, some of the most prominent; and refer you to the Bible itself for the detail.

The story of Sarah's giving Hagar to Abraham, Gen. ch. 16.

The transaction of Lot's two daughters with their father, Gen. ch. 19.

The disputes of Rachel and Leah, about the possession of Jacob's person, and there giving each her handmaid to Jacob, Gen. ch. 30.

The history of the rape of Dinah, Gen. ch. 34.

The story of Judah and Tamar, Gen. ch. 38.

The solicitation of Joseph by Potiphar's wife, Gen. ch. 39.

The story of Zimri and Cozbi the Midianitish woman, Numbers, ch. 25.

The story of Samson and Delilah, Judges, ch. 16.

The story of the Levite's concubine abused by the Gibeathites, Judges, ch. 19.

The story of Abigail, the wife of Nabal, becoming the wife of David, 1 Samuel, ch. 25.

The story of Amnon, one of the sons of David, debauching Tamar, the sister of Absalom, another of David's sons, 2 Samuel, ch. 13.

The story of the same Absalom debauching his father's concubines in the face of all Israel, on the house-top, 2 Samuel, ch. 16.

And last, though not least in this class, the story of David and Bathsheba, the wife of Uriah, the Hittite, 2 Samuel, ch. 11.

The only part of the Bible to which I shall refer you, as containing a description of voluptuous debaucheries, is the Song of Solomon; which those, who settled the canon of Scripture, not knowing how to sanctify if taken in the literal sense, have contrived to metamorphose into a mystic declaration of the great love of Christ to his church; the greater liberality, however, of modern divines has admitted it to be nothing more than a luxurious love song, composed on occasion of the marriage of Solomon with the princess of Egypt; and that it is improperly permitted to remain in the sacred canon.

Gentlemen, with respect to the instances of cruel and torturous executions, and unrelenting vindictiveness, I do not feel myself restrained by any principle of modesty from reading *them*; and, therefore, I will give you them at full length. The first to which I shall crave your attention, is that of the treacherous and cruel revenge of the two sons of Jacob, Simeon and Levi, on the Sichemites, Genesis, ch. 34.

Lord Kenyon.—I do not know how far I ought to sit here, and suffer a gentleman at the bar to bring forward parts of the Bible in this way. It is for you, gentlemen of the jury, to say whether you wish to hear them read.

Some of the Jury nodding assent to his lordship.—Mr. Kyd continued.—If the gentlemen of the jury do not wish to hear these passages read, I do not wish to trespass on their time or the patience of the Court, though I feel this interruption throws me into some embarrassment as to the mode of proceeding in my defence.

Some Gentleman from within the bar.—You may cite the passages, as you did the others.

Lord Kenyon.—You may cite the passages; besides, sir, you have admitted that the gentlemen of the jury must have read the Bible.

Mr. Kyd.—Then, my lord, I will cite them.—The next in order is the history of the slaughter of the Midianites, Numbers, ch. 31.

The slaughter of the Canaanites by the command of God; particularly the conduct of Joshua to the men of Ai, Joshua, ch. 8; and the slaughter of the five kings, Joshua, ch. 10.

The story of Sisera and Jael, and the song of Deborah and Barak, in exultation at the event, Judges, ch. 4, 5.

The murder of the people Jabesh Gilead, for not having gone up with the rest of the tribes against Benjamin in the case of the Levite's concubine, Judges, ch. 21.

The account of Samuel hewing Agag in pieces before the Lord in Gilgal, 1 Samuel ch. 15.

The unnecessary and wanton cruelty of David to the inhabitants of Rabbah, the chief city of Ammon, taken after its siege by Joab 2 Samuel, ch. 12.

The murder of Saul's seven innocent sons by David, on pretence of their father's slaugh-

ter of the Gibeonites being the cause of three years famine, 2 Samuel, ch. 21.

David's dying charge to Solomon respecting Joab and Shimei, 1 Kings, ch. 2.

The slaughter of seventy of Ahab's sons, in Jehu's zeal for the service of the Lord, 2 Kings, ch. 10.

Gentlemen, I apprehend it is now pretty clear that a man might have written the first passage inserted in this indictment, without being actuated by a wicked and malevolent intention to disturb the happiness of mankind. I will, therefore trouble you no farther on this head, but proceed to examine the second passage which runs in these words, "Did the book called the Bible excel in purity of ideas and expression, all the books that are now extant in the world I would not take it for my rule of faith as being the word of God, because the possibility would nevertheless exist of my being imposed upon. But when I see throughout the greatest part of this book scarcely any thing but a history of the grossest vices, and a collection of the most paltry and contemptible tales, I cannot dishonour my creator by calling it by his name," page 10.

Gentlemen, this passage does not stand in the pamphlet alone and unconnected with the context; it is connected in sense with two paragraphs preceding it; and, of the three, is the last link in a regular chain of observation. It is an admitted maxim in prosecutions of this kind, that a single offensive passage is not to be selected and considered as conclusive evidence against the defendant; but it must be compared with the context; or those other parts of the work to which it seems to bear a relation; and from the whole taken together, your judgment is to be formed. The two preceding paragraphs to which I allude are these—

"If we permit ourselves to conceive right ideas of things, we must necessarily affix the idea not only of unchangeableness, but of the utter impossibility of any change taking place, by any means or accident whatever, in that which we would honour with name of the word of God; and, therefore, the word of God cannot exist in any written or human language.

"The continually progressive change to which the meaning of words is subject, the want of an universal language which renders translation necessary, the errors to which translations are again subject, the mistakes of copyists and printers, together with the possibility of wilful alteration, are of themselves evidences, that human language, whether in speech or in print, cannot be the vehicle of the word of God. The word of God exists in something else."

And then follows the passage which I have just read to you from the indictment. You observe, therefore, that the latter is not composed of wanton assertions, made without ex-

amination, and merely hazarded from a malignant intention to revile the Bible; but it is the natural result of a regular train of thinking, it follows almost as the inevitable consequence of what immediately precedes it. One of the attributes of God, acknowledged as a fundamental article of the Christian faith, is his immutability: it is an inevitable consequence that his *will* should be immutable; and it seems by no means a forced or unnatural mode of reasoning, to say that, that by which the manifestation of his will is made to man, must also be immutable; in other words, that the word of God should be immutable: but human language is mutable, and as a vehicle of immutability, is subject to all the objections pointed out in the two paragraphs of the context; it cannot, therefore, be considered as an unfair or a forced conclusion "that the word of God exists in some thing else." Is it then a subject of wonder, that the author pursuing this train of thought, should express himself as he does, in the paragraph which follows? "Did the book called 'the Bible,' says he, 'excel in purity of ideas and expression all the books that are now extant in the world, I would not take it for my rule of faith, as containing the word of God.'" Does he say this without a reason? No; he assigns a reason, which it will hardly be denied might occur to a thinking mind, "because," says he, "the possibility would nevertheless exist of my being imposed upon." Will any man say that such a possibility does not exist? Is it criminal to suppose its existence? or if its existence may be innocently supposed can it be criminal to be influenced by such a supposition? "But when I see throughout the greatest part of this book, scarcely any thing but a history of 'the grossest vices, and a collection of the most paltry and contemptible tales, I cannot dishonour my creator by calling it by his name.'"

Gentlemen, I admit the author goes too far, when he represents the Bible as containing "*scarcely any thing else* but a history of 'the grossest vices, and a collection of the most paltry and contemptible tales;'" yet certainly it will not be denied, that a considerable part of it is a history of the grossest vices; and perhaps your own recollection will satisfy you that it contains tales which, if found in any *other* book, you would consider as paltry and contemptible. The author, then, refuses his assent to the divine authority of the Bible, not from a malevolent intention towards mankind, but from the reverence he feels for the creator.

Gentlemen, I now proceed to the third passage inserted in the indictment: "To charge 'the commission of things upon the Almighty which, in their own nature, and by every rule of moral justice, are crimes, as all assassination is, and more especially the assassination of infants, is matter of serious concern: the Bible tells us that those as-

sassinations were done by the express command of God; to believe, therefore, the Bible to be true, we must unbelieve all our belief in the moral justice of God; for wherein could crying or smiling infants offend? And to read the Bible without horror we must undo every thing that is tender sympathizing and benevolent in the heart of man: speaking for myself, if I had no other evidence that the Bible is fabulous, than the sacrifice I must make to believe it to be true, that alone would be sufficient to determine my choice."

Gentlemen, this is reasoning, this is argument; and it is such reasoning, such argument, as I believe a rational man will find some difficulty to resist: that assassination is a crime abhorrent from the tender feelings of the human heart, will hardly be denied; and strong reasons would in *these times*, be required to induce a belief that such a crime could be committed by the express command, or even with the approbation of God. This passage alludes principally to the slaughter of the Canaanites by Joshua in the conquest of the promised land, as appears from what immediately precedes it:—"When we read in the books ascribed to Moses, Joshua and others, that the Israelites came by stealth upon whole nations of people, who, as the history itself shows, had given them no offence: that they put all those nations to the sword, that they spared neither age nor infancy; that they utterly destroyed men women and children; expressions that are repeated over and over again with exulting ferocity; are we sure these things are facts? are we sure the creator of man commissioned these things to be done? are we sure that the books which tell us so, were written by his authority?"

Gentlemen, this is an objection to the authority of the Bible, which has been made a hundred times, and it has as often received the same unvaried answer; whether that answer be sufficient to satisfy a rational and inquiring mind, I shall now proceed to examine. The bishop of Landaff, in his answer to the "Age of Reason," admits, that, if the actions which are here condemned, had been committed by the sole authority of the agent, they would have merited the reproaches they have received; he says in pages 80, 81, "The destruction of the Canaanites exhibits to all nations in all ages, a signal proof of God's displeasure against sin; it has been to others, and it is to ourselves a benevolent warning: Moses would have been the wretch you represent him, had he acted by his own authority alone; but you may as reasonably attribute cruelty and murder to the judge of the land in condemning criminals to death, as butchery and massacre to Moses in executing the command of God."—The strength of the objection then is admitted to be, not the assertion, that the actions abstractedly considered, deserve the judgment which is

passed upon them; but that it is inconsistent with our ideas of the moral justice of God that they should be commanded or authorized by him:—Let us see then how it has been answered; “you hold it impossible,” says the bishop, page 13, “that the Bible can be the word of God, because it is therein said, that the Israelites destroyed the Canaanites by the express command of God; and to believe the Bible to be true, we must, as you affirm, unbelieve all our belief of the moral justice of God; for wherein, you ask, could crying or smiling infants offend? I am astonished that so acute a reasoner should attempt to disparage the Bible, by bringing forward this exploded and frequently refuted objection of Morgan, Tindal, and Bolingbroke. You profess yourself to be a Deist and to believe that there is a God, who created the universe, and established the laws of nature, by which it is sustained in existence. You profess that from the contemplation of the works of God, you derive a knowledge of his attributes; and you reject the Bible because it ascribes to God, things inconsistent, as you suppose, with the attributes which you have discovered to belong to him; in particular, you think it repugnant to his moral justice, that he should doom to destruction the crying or smiling infants of the Canaanites.—Why do you not maintain it to be repugnant to his moral justice, that he should suffer crying or smiling infants to be swallowed up by an earthquake, drowned by an inundation, consumed by a fire, starved by a famine, or destroyed by a pestilence? The word of God is in perfect harmony with his work; crying or smiling infants are subjected to death in both. We believe that the earth at the express command of God, opened her mouth, and swallowed up Korah, Dathan, and Abiram, with their wives, their sons and their little ones. This you esteem so repugnant to God’s moral justice, that you spurn as spurious the book in which the circumstance is related. When Catania, Lima, and Lisbon were severally destroyed by earthquakes, men with their wives, their sons, and their little ones, were swallowed up alive:—Why do you not spurn as spurious the book of nature, in which this fact is certainly written, and from the perusal of which, you infer the moral justice of God?”

Gentlemen, this is the answer which has been given a hundred times, to this objection a hundred times taken; the objection is, therefore, called an *exploded* and frequently *refuted* objection; and I suppose the crime imputed to the author of the “Age of Reason” is, that the Answer has not *satisfied* him; that he has from motives of malevolence, revived an objection which he knew was ill founded. Gentlemen, observe the weakness of this answer.

Lord Kenyon.—I cannot sit in this place, and hear this kind of discussion.

Mr. Kyd.—My lord, I stand here on the privilege of an advocate in an English court of justice: this man has applied to me to defend him; I have undertaken his defence; and I have often heard your lordship declare, that every man had a right to be defended; I know no other mode by which I can seriously defend him against this charge, than that which I am now pursuing; if your lordship wish to prevent me from pursuing it, you may as well tell me to abandon my duty to my client at once.

Lord Kenyon.—Go on, sir.

Mr. Kyd.—My lord, I hope your lordship does not conceive, I appear here with an intention to insult the dignity of this Court; far be it from me to do any thing indecent in itself, or unbecoming the situation in which I stand. My lord, it is this scandalous prosecution which compels me in the discharge of my duty to my client, to enter into a discussion, which it is its professed object to suppress—a discussion which I would gladly have avoided, which is highly irksome to myself, and in its effects may be dangerous to the public mind. My lord, I feel the highest obligation to your lordship, for having prevented the reading of the remaining passages inserted in the indictment; you have released me from one half of the painful task, which I should otherwise have considered it my duty to perform.

Gentlemen, when I said the answer was weak, I did not mean from thence to conclude that the objection was unanswerable; it may be ill founded, as I am bound to suppose every objection to the authority of the Bible must be: but I have never yet read or heard an answer to it, which satisfied my mind; it may be *susceptible* of an answer, but it has never yet received it. Future theologians may perhaps discover it; but till that discovery be made, it surely can never justly be imputed to a man as a crime, that fairly exercising his reason on the subject, he is struck with the force of the objection—I return now to the examination of the Answer; it amounts to no more than this, that as it is no objection of the moral justice of God, that by an earthquake, an inundation, or a conflagration, a famine, or a pestilence, men, women and children, the innocent and the guilty, may promiscuously meet their death, so neither is it inconsistent with the same attribute, that, by a special manifestation of his will on a particular occasion, he should command a whole nation promiscuously to be put to death for the crimes of a part.

Gentlemen, this is reasoning by comparison; and reasoning by comparison is often fallacious; on the present occasion, the fallacy is this: that in the first case, the persons perish by the operation of the general laws of nature, not suffering punishment for a crime; whereas in the latter, the general laws of nature are suspended or transgressed, and God commands the slaughter to avenge his

offended will.—Is this then a satisfactory answer to the objection? I think it is not; another may think so too; which it may be fairly supposed the author did; and then the objection, as to him, remains in full force, and he cannot, from insisting upon it, be fairly accused of malevolent intention.

Gentlemen, for the present, I pass by the fourth passage inserted in the indictment, as the fifth has a more immediate connexion with the three which I have already considered. It consists of but a single line picked from the middle of a sentence; taken by itself, it is no doubt uncourtly and offensive.—“It is a book of lies, wickedness, and blasphemy:”—but connected with the context, appears to be nothing more than the result, very coarsely expressed, no doubt, but still the result of a connected chain of thinking; the passage in which it stands in the book, is in page 53; and runs thus: “People in general know not what wickedness there is in this pretended word of God. Brought up in habits of superstition, they take it for granted that the Bible is true, and that it is good; they permit themselves not to doubt of it; and they carry the ideas they form of the benevolence of the Almighty, to the book, which they have been taught to believe was written by his authority.—Good heavens! it is quite another thing, it is a book of lies, wickedness, and blasphemy; for what can be greater blasphemy than to ascribe the wickedness of man to the orders of the Almighty?”

The whole, you observe, proceeds on the same principle with the passages I have already examined, that the author cannot, consistently with his ideas of the attributes of God, admit the Bible as containing the revelation of his will: the same observations, which I have taken the liberty of suggesting to you on the other passages, might be applied to this; but I will not fatigue your attention by repeating them.—I proceed to the passage which stands the fourth in the indictment, and is in these words: “I have” now gone through the examination of the four books ascribed to Matthew, Mark, Luke, and John; and when it is considered that the whole space of time from the crucifixion to what is called the ascension, is but a few days, apparently not more than three or four, and that all the circumstances are reported to have happened nearly about the same spot, Jerusalem, it is, I believe, impossible, to find in any story on record, so many and such glaring absurdities, contradictions and falsehoods, as are in those books.”

Gentlemen, I have expressed my obligation to his lordship for having saved me from the task of defending the remaining passages inserted in the indictment; I wish I had to thank him for saving me from the task of defending this: as the matter now stands, however, it is my duty to defend it. Gentle-

men, this passage is the result of a serious examination of the books in question, which begins at page 82, and ends at page 91: if you will have the goodness to retire and read it with attention, I think you will find it difficult to say the conclusion is not warranted by the premises; I have myself made a similar examination, and I find it impossible to deny that there are, at least *apparent* inconsistencies and contradictions in those books, which it is difficult to reconcile: I hold in my hand a more extensive and laboured examination of them, which demonstrates to me, that those inconsistencies and contradictions are numerous and important; and that they must be so is evident from the number of concordances of the Gospel, with which learned divines have thought it necessary to favor the public; had they seen in those books no apparent inconsistencies and contradictions of importance, it would have been folly to compose such laboured and voluminous works, with a view to reconcile them to each other.

Gentlemen, I hope, by this time, it appears to you, as I protest it does to me, that there is no evidence of any immoral, wicked, or impious intention to be collected from the publication itself; and you are not to impute such intention to the author or to the publisher, merely because the publication impeaches those articles of faith which you yourselves have been taught to believe; the very religion, for the vindication of whose honour, it is pretended, this prosecution has been instituted, forbids you to draw so uncharitable a conclusion.

Gentlemen, good policy and a prudent regard for the interests of the Christian religion, ought to have prevented the institution of this prosecution; and I submit to your good sense, whether the same policy, and the same prudent regard ought not to have its weight in procuring the acquittal of the defendant. If the Christian religion be founded in truth; if it will stand the test of reason, the more it is examined, the more firmly will it be established in the minds of men; if some produce arguments against it, there must be others, who are willing and able to defend it; if it be founded in truth, it is even for its interests that it should from time to time, be seriously attacked: men educated in the belief of its truth, are apt to receive its doctrines or its supposed doctrines without examination, and it is not till those doctrines are disputed, that its professors are under the necessity of making themselves acquainted with the principles on which their faith is founded; from want of examination, many doctrines have been incorporated with the Christian system, which were never taught by Christ. The enemies of religion succeeding in their attacks on these adventitious doctrines, have boasted of a triumph over the Christian system, itself; it has been only by a close examination provoked by those very attacks, that the real

truths of Christianity have been separated from those spurious incorporations, and the system restored to its native purity and lustre. To punish men for disputing the truth of Christianity, is almost to admit that it will not bear the test of a rigid examination; the effect of such punishment, at least, is, to harden men in their opposition, and to confirm them in their unbelief; it was under the severest persecutions that Christianity spread and flourished; it established itself at last on the imperial throne; its professors having thus obtained possession of power, became in their turn persecutors of their opponents, in direct violation of the precepts of their divine master; the effect was such as might have been expected; the human mind is uniform in its operations; those regions where Christianity was first planted, and where it flourished for three centuries, are now the seat of another religion. But, gentlemen, lest my argument should be considered as entitled to a less degree of attention from the situation in which I now stand, and the duty I have undertaken to fulfil, I will refer you to an authority which cannot be suspected; I will read to you the remarks of Dr. Lardner on the council of Nice. That council was held under the auspices of Constantine about the year 325. It was there that the articles which have since been received in Christian churches in the form and under the title of the Athanasian Creed, were first established as the articles of faith; many members of that council were *compelled* to subscribe them; it is this compulsion which Dr. Lardner reprobates; it is to this compulsion that he imputes the effects I have just described. "Thus," says he, "this council of Nice introduced authority and force in the church, and affairs of religion. Or, if authority had been introduced before, they now openly countenanced it, and gave it a farther sanction. This way of acting, may be supposed to have been the chief cause of the ruin of the Christian interest in the East. This and the like determinations of speculative doctrines, and the violent methods by which they were enforced, may be reckoned to have paved the way for Mahometanism more than any thing else. By these means ignorance and hypocrisy, and tedious rituals came to take place of honesty, true piety, and undissembled, spiritual and reasonable worship and devotion. In about three hundred years after the ascension of Jesus, without the aid of secular power, or church authority, the Christian religion spread over a large part of Asia, Europe, and Africa: and at the accession of Constantine, and convening the council of Nice, it was almost every where, throughout those countries, in a flourishing condition. In the space of another three hundred years, or a little more, the beauty of the Christian religion was greatly corrupted in a large part of that extent, its glory defaced, and its

light almost extinguished. To what can this be so much owing as to the determinations and transactions of the council of Nice, and the measures then set on foot, and followed in succeeding times?"—After many other observations, he says, "Those Arians confessed with the mouth, and signed with the hand, what they did not believe. For *that* they are to be blamed. But how came they to do so? It was owing to a fear of ignominy and punishment. But why were they put in fear? Why was a law made to punish such as did not believe the consubstantial doctrine? They offended who *signed*, it is allowed; and are *they* innocent, who laid before them a *temptation* to sign? Was there a necessity, that they should be required to sign, whether they believed or no? Can you show any ground or authority from reason, or from Jesus Christ, whereby you are allowed or enjoined to require your brethren to sign certain speculative articles whether they believe them or not? Nay, is not this quite contrary to the design and example of the Lord Jesus, who never proposed to men any arguments, but such as were suited to gain the judgment? And who, when many forsook him who had followed him for a time, took that opportunity to refer it to the choice of those who still stayed with him, whether *they* also would go away? If any pretend it to be of importance, that others should sign or profess certain doctrines supposed by them to be true; I would answer, that sincerity is of yet greater importance. And you ought never to endeavour to secure the interest of speculative points, with the prejudice of what is of greater moment, honesty and integrity." Again—"Possibly some may say that such thoughts as these are founded upon the experience and observation of later ages; and that all this is more than could be reasonably expected of any men, however wise, at that time. To which I answer, that it is no more than might have been expected; for it is not more than what men are taught by the common principles of equity. The Gospel, too, teaches and enacts moderation and forbearance, and condemns all imposition on the consciences of men, and all force and violence in things of religion.—I have taken all this freedom, thus to propose these thoughts. But I do not mention them so much by way of blame and censure, as with a view of amendment; that Christians in general may at length be so wise as to consult the true interest of their religion: and hoping, that they who are in high stations in the church, and have a powerful influence, will improve all opportunities, and use their best endeavours, that the moderation of Christians may be known unto all men."

In another volume, the doctor enlarges on the same idea, vol. ii. p. 2. "We must with

"Tertullian openly profess, that the new law does not defend itself by the sword of the *magistrate*; forasmuch as it hath pleased Christ, the author of it, that no man should be forced to the embracing of his law by the punishments of this life, or the fear of them, as appears from many places of the New Testament, not only of Paul, but also of John, and Luke, and Matthew. Nor is it (as the same father says at the end of his book to Scapula) a part of religion to *force* religion, which must be taken up freely, not upon compulsion. Who will lay upon me the necessity of believing what I will not, or of not believing what I will (as Lactantius says)? Nothing is so voluntary as religion; to which, if the mind be averse, religion is quite destroyed. Faith is to be wrought by persuasion, not by compulsion. Severity *has* always done harm, and always *will* do harm; and our minds, like noble and generous steeds, are best managed with an easy rein; rather by reason than authority, rather by good words than by threats." He then refers to the opinion of Doctor Bentley, who, in a sermon at a public commencement at Cambridge, says, "It has pleased the Divine wisdom, never yet to leave Christianity wholly at leisure for opposers; but to give its professors that perpetual exercise of their industry and zeal. And who can tell if without such adversaries to rouse and quicken them, they might not, in long tract of time, have grown remiss in the duties, and ignorant of the doctrines of religion?" "These learned men," continues the doctor, "have assured us upon the foundation of the scriptures, of the fathers, and of reason, that all force on the minds of men in matters of belief is contrary to religion in general, and to the Christian religion in particular; and that severity instead of doing good, has always done harm. These points might be enlarged upon, but nothing new can be offered. Possibly some good men may still be in some doubt concerning the issue of admitting the principles of religion to be freely and openly canvassed. But I think, that such may find satisfaction even upon this head in the passages I have quoted, provided they will be pleased to consider them. However, I will add a few observations briefly upon this matter. It is an old saying which has been much admired and applauded for its wisdom, that truth is great and strong above all things. There is certainly some real excellence in truth above error. Great and important truths are clearer than others, and not likely to be mistaken, but to shine the more for examination. Our own time also, affords a convincing instance to all that will open their eyes to observe. The Protestant states and kingdoms of Europe, as they enjoy greater liberty than others, proportionably exceed their neighbours in the justness of their

sentiments, and the goodness of their lives. Which advantage can be ascribed to no other cause so much as the liberty we enjoy. For introduce among us the tyranny they are under; and we shall be as ignorant, as superstitious, and as corrupt as they. If then men should be permitted amongst us, to go on delivering their sentiments freely in matters of religion, and to propose their objections against *Christianity itself*; I apprehend we have no reason to be in pain for the event. On the side of Christianity I expect to see, as hitherto, the greatest share of learning, good sense, true wit, and fairness of disputation: which things, I hope; will be superior to low ridicule, false argument, and misrepresentation. This victory obtained upon the ground of argument and persuasion alone, by writing and discourse, will be honourable to us and our religion: and we shall be able to reflect upon it with pleasure. We shall not only keep that good thing we have received, but shall deliver it down to others with advantage. But a victory secured by mere authority is no less to be dreaded than a defeat. It may appear a benefit for the present; but it really undermines the cause, and strikes at the root of our holy profession."

Gentlemen, thus much I have thought it incumbent on me to submit to you in defence of the work and of the author; because, if the work and its author can be successfully defended, it follows *almost as a matter of course* that the publisher must be acquitted: I say this follows *almost as a matter of course*, because I feel myself bound to admit, that a man may from malicious motives, publish that which another might innocently write; but these motives must be shown to exist from the conduct of the publisher himself; in the present case no attempt to show their existence has been made; I am, therefore, at liberty to conclude, that if I have succeeded in defending the work, I must necessarily have succeeded in defending my client. But there is another ground of defence peculiar to the defendant. The pamphlet, I believe, was originally published in France, was reprinted here in the year 1794, and went through several editions; yet nobody thought of prosecuting the publishers: at least nobody was prosecuted: it had sunk into oblivion, where it might quietly have remained, had it not been for the Answer of the Bishop of Landaff, which raised it from the grave; that Answer was published in the year 1796, and the defendant printed the present edition from no other motive than to gain something in the regular course of his trade, and to gratify the curiosity of the public, who wished to know what it was the bishop had thought worthy of an answer. I am not indeed enabled to prove, by the strict rules of evidence, the truth of this case, because the persons by whose testimony I must necessarily prove the most material part of it, might refuse to be

examined on the ground that their testimony might subject them to be put in the situation in which the defendant now stands I believe, however, what I have stated is generally admitted to be true; and, therefore, I trust the defendant will have the same benefit from it as if it had been regularly proved.

Gentlemen, the faculty of reason is the most precious gift of God to man; it was given him to be freely exercised on every subject which could interest him or attract his attention; it will not be denied that every man is at liberty to entertain what opinions he pleases on religion as well as on every other subject; he has a right, without human control, to examine and discuss;—"true," it will perhaps be said, "but he has not the right of publishing to the world the result of his discussion, in contradiction to the established religion of the country."—With this restriction, what advantage, what satisfaction can he derive from his right of discussion? Where is the boasted superiority of the constitution of this country over those which are enslaved by the inquisition? Where, as here, as every where, the thought of man is free from human control. But it is a part of the social nature of man that he should communicate his thoughts to his fellows; it is an attribute of reason that it can never be successfully cultivated without that communication; knowledge is progressive; without the knowledge of the labours of those who have preceded him, a single individual could learn but little; after a long life spent in contemplation, he might sink into the grave, without having attained even the first rudiments of science: In short it is to an unrestrained right of discussion, and free communication that we must attribute the advanced state of the sciences and the arts, that we are indebted for all the advantages we have derived from the Reformation and the Revolution. It has been said that this work has had an extensive circulation, and has done much mischief; I am not aware of any mischief it has done, or that its circulation has been extensive: I rather think that till this prosecution, or at least till the Answer of the Bishop of Landaff, it was very little known, and excited but little interest; I had never seen it myself, till I was called upon to defend it.—One effect, I have reason to believe it has had, at which the promoters of the present prosecution can hardly be displeased; many of the author's *political* converts, offended with him for attacking their religion, have become less attached to his political principles.

Gentlemen, you have an important duty to discharge both to the public and to the defendant; the fate of the latter is in your breasts; you will discharge that duty in a manner satisfactory to your consciences, and I am bound to presume, satisfactory to your country.

REPLY.

The Honourable Thomas Baskins;

Gentlemen of the Jury;—I am certainly bound in respect for the learned gentleman who has just sat down, to believe that he really felt, as he expressed it, his delicate and difficult situation, in having the task of defending a performance of the description now before you, with that decorum which he acknowledges must be observed in a court of justice. Indeed, I have already shown you, and in a manner Mr. Kyd has not been able to controvert, that if there be a syllable of truth in the parts of the book brought before you, the Court has no jurisdiction on any subject whatsoever; and it is a point, therefore, which I might have confidently submitted to the noble and learned judge, whether I had not a right to interrupt the learned gentleman, in almost every sentence he has uttered; but I thought that both religion and justice would be best served by his being heard.

From part of his discourse, indeed, the prosecution derives support. My part is simplified and shortened, by his correct description of the crime, and by his not attempting to distinguish between the publisher and the author, acknowledging that the intension of the one must be the criterion of the defence of the other. I am also relieved from troubling you again, on the liberty of the press, which, God forbid, that I should dispute or undervalue. You indulgently attended to my opening, and I have now therefore only to ask you, whether any thing has been said by my learned friend, in support of the undoubted privilege of free and public discussion, that goes beyond what I not only had admitted to-day, but which Mr. Kyd himself most obligingly referred to in my repeated exertions for its support.

I admit also the good sense and soundness of every thing quoted from Dr. Lardner, and the bishop of Landaff. They claimed for themselves the protection of neither pains nor penalties against the fair antagonists, or even the defamers of their works in the *forum of intellectual controversy*; nor do I think that pains or penalties were likely to visit such opponents; but whatever those learned men might have thought or written, from a confidence in scripture, on the uselessness or impolicy of such prosecutions, they could not alter the criminal law of England, nor enable Mr. Kyd, to appeal with any possible success to their opinions, if his client fell within its restraints. I have no difficulty, nevertheless, in disavowing the propriety of prosecution in a *doubtful* case, or in any indeed, which could have a single advocate or supporter amongst honest and enlightened men. Nobody ever thought of questioning by indictment the most erroneous opinions on the authority of expositions of scripture, when the work was obviously addressed by its author to the consciences and understandings of his countrymen, or to the world of literature in all

countries; but the prosecutors, some of whom are ministers of the church, others of them magistrates, and all of them respectable men, having considered the book before you, to be of an entirely different description, unanimously concurred in the fitness of this prosecution,—not to support the authority of scripture, which they knew nothing could destroy; but, by interrupting the circulation of this detestable book amongst the weak and ignorant, to preserve to them the consolations of religion, and to secure our national morals from the most mischievous and dangerous contamination. *This* was their motive, but whether they were right or wrong, whether the prosecution be wise or impolitic, cannot now be the question. The defendant is accused before you, and must be convicted or discharged as the law of this land ought to adjudge, which you are sworn to obey, according as the evidence in your honest opinions shall warrant and direct.

Gentlemen, Mr. Kyd has, as I have already stated to you, correctly described the offence: yet he seems to think it incapable of the same precise definition in a criminal charge as other cases of misdemeanor. *Blasphemously*, he says, is derived from two Greek words, signifying, to hurt, injure, or wound reputation, and good opinion. *Prophanely*, from a Latin word, signifying the profanation of holy places or persons. And *impious* from the Latin word *pius*, signifying reverence for sacred things; and that these terms, therefore, *had often shifted and been applied differently*, not only by individuals against individuals, but by nations against nations; invading conquerors having, as he said, upon those principles, destroyed the temples of the conquered, as profanations, whilst the conquered in their turns, inveighed against their invaders, as the violators of every thing that was sacred. To all this, I can only answer, that if Mr. Kyd had come before us as a foreign conqueror, demolishing our churches, as irreligious, impious, and profane, our only course would have been to keep out of his way, if we could, or to have made the best terms with him in our power for the preservation of our religion and our lives; but when he condescends to appear before you in the humbler character of a *British subject*, and acknowledges the authority of the court in which he pleads to be *wholly derived from the Bible which he has reviled and stigmatised*, I am a little at a loss to understand his argument, or to feel the force of his historical remarks, because it is a belief in scripture alone, that could qualify you to accept the oath you have taken, or bind you to the discharge of its obligations.

Another absurd contradiction followed: he told you in a quotation from the book he is defending, that the author had done complete justice to the character of Christ; admitting that though his system of morality had been preached before, by Confucius

and others, yet that all his preachings were most moral and excellent. Now, what other preachings or sayings of our Saviour had ever been seen, or known or heard of; but in the very gospels which record them, and which he presumes to ridicule and defame? When this absurdity has thus only been presented fairly to your minds, I might surely spare you the trouble of hearing me any longer on it; yet the conclusion of the same sentence is such a climax of folly, that it ought not to be suppressed; where, in speaking of the philosophers and moralists, from whom the gospel had borrowed its doctrines, the book before you, after naming Confucius, and some of the Greek philosophers *before Christ*, concludes the list with the opinions of our *Quakers since*. Now can any thing be so disgustingly stupid as this? I may say so without offence, as the words are not Mr. Kyd's, but of the book: perhaps, indeed, it is almost an arraignment of the prosecution for dragging out of its self-devoted obscurity, a composition so innocent from its perfect folly, as that it could gravely maintain that our Saviour had borrowed from our *Quakers* the religion which he taught.

But another, and if possible a still grosser absurdity arises out of this pretended reverence of the author for the character of Christ, "*as a most amiable and virtuous man*;"—though, according to him, he was not, it seems, of the divine nature he assumed, nor was sent by God, according to the prophecies of the Old Testament, upon any possible construction of them, even if they were authentic, which the author not only denies, but condemns as blasphemously false. Now, consistently with this total denial of our Saviour's character and mission, what becomes of his acknowledged virtue which no man ever denied or questioned, and which Mr. Paine distinctly admits? since, *in that case*, he must have been an audacious impostor, as he constantly appealed to the prophecies concerning him, and applied them to himself even in the most minute circumstances of his life and death, declaring at the same time, throughout all the gospels, that he was the son of God, appointed before the foundation of the world for the redemption of mankind. It is therefore quite impossible to admit the pure and moral character of our Saviour, and yet deny the divine nature and character which he assumed, Christians who differ from each other, as to the mysterious nature of Christ, build all their differences upon, that interpretation, of the words of our Saviour himself, which they consider to be the best; but those who are not Christians, though they are at liberty to deny altogether the truth of every part of scripture, cannot consistently admit the integrity of Christ; because, if the whole New Testament be unfounded, it was clearly an imposture on the part of its author, who must have known it to be untrue. This is a dilemma, which has not been sufficiently, if at all, urged by our

greatest divines against the unbelievers of Christianity, who have one and all I believe admitted the purity and integrity of Christ.

Gentlemen, Mr. Kyd, after throwing down to me the gauntlet of defiance to find a single passage in the whole work he is defending inconsistent with the chastest system of morals, read of his own accord this passage : "*When we reflect on the cruel and torturous executions, and the unrelenting wickedness with which more than one half of the Bible is filled, it would be more consistent, that it should be called the Word of a Demon, than the Word of God. It is an history of wickedness that has served to corrupt and brutalize mankind.*"

Now, I am willing to rest the whole cause upon the *possible good faith* of this sentence he has quoted, and shall be contented to waive all the protections of the law as it has been delivered in the most solemn judgments of our courts, if you can believe that the author wrote this as his *honest, conscientious opinion, and belief*. Mr. Paine is by no means a weak man, nor deprived of the foundations of a right judgment by ignorance or superstition. Nobody who has read his "*Common Sense*," addressed to the Americans at the period of her revolution, can refuse to acknowledge his masculine understanding; and I do therefore confidently maintain that such a man cannot ask credit for believing, that the crimes of the Jewish nation before the period of the gospel, which he himself admits was preached to correct and stigmatize, and to deliver the world from their contagion and example, was nevertheless published to brutalize the world by their record.

I am not called upon, gentlemen, whilst our churches, and the writings of so many pious and learned men are open for our instruction, to illustrate the divine authority of the Old and New Testament, *taken as one whole*, for our direction and happiness. The *first* is *historical* almost throughout, and the history of man must be the history of vices as well as of virtues; but they were recorded in scripture together, to unfold, and to support the grand system of prophecy, which was in future ages to be the irresistible evidence of its truth, and to warn future generations against even the *temporal* consequences of wickedness by the signal judgments of God.

On the same principle, would any but a lunatic assert, that mankind were brutalized by the proceedings of courts of Justice, because the most atrocious and monstrous crimes were left by them on record? Are they not, on the contrary, laid open to the whole world as the best examples to deter men from committing them? and in the sacred writings they are never introduced but for that benevolent and salutary purpose.

In the universal destruction of Sodom and the individual punishment of Onan, we see the proscription of Heaven against vices not only odious from their pollution and filthiness, but because they oppose the first great

purpose of God in the population of the world : and whoever will carefully examine the books of the Old Testament (*remembering always the nation to which they were addressed*) will not only be delighted but astonished.—The wickedness of Joseph's brethren was a necessary and sublime introduction to the prophecy, that the Messiah should come out of a particular nation and family, according to God's earliest promise to Abraham, the pious father of a particular tribe, which tribe was to come out of Egypt, and which you find distinguished accordingly by the prophets from all the others, that the promise might be distinctly seen to be fulfilled, in the known genealogy of Christ.—It was not intended that the truth of divine revelation should burst upon the world by a sudden light, but that it should be gradually established by the irresistible evidence of super-human prophecy; which rendered the history of the Jewish nation most material in the manner the Old Testament has recorded it, of which surely the destruction of their temple and the extinction of their government are most memorable instances; both having happened as predicted, *after the Messiah had come* : nor could imperial power though purposely exerted to disgrace the prophecy, raise one stone upon another of the structure that had been destroyed. No wonder, then, that the enemies of Christianity should rail at the Old Testament which has preserved so much of the testimony that supports it.

Just in the same manner Mr. Kyd was willing, as he said, to spare your pious ears the details of David's offence against his faithful and unoffending servant; yet what could possibly better lead us to remember the frailty of our nature, and the necessity of a constant guard upon our passions? This king of Israel, though in other respects most moral and religious, had been guilty of both adultery and murder, with peculiar aggravations of treachery and deceit. In this state of mind, the rebuke of his wickedness in the height of his power might have served only to harden his heart, and to obstruct his repentance; but the Scripture tells us that it was tried by God himself who knew it; and Nathan was sent to bring his crime before him in a manner most affecting and addressful : and as the picture of cruelty and injustice presented to him seemed to apply not at all to this otherwise virtuous man, he instantly exclaimed in the native goodness of his heart, "*As the Lord liveth that man shall die !*"—Now, I could give no kind of credit to any man living who should tell me that he was not moved beyond the power of human eloquence by the answer of the prophet.—For my own part, I have never read it without almost exclaiming with emotion, *THIS IS NOT THE CONTRIVANCE OF MAN;—IT IS THE WORD OF GOD.*—Yet this beautiful history was in the list enumerated by Mr. Kyd from the book, as one of the many charges against the Bible, to show it

to be the work rather of a demon than of God.

But let me abandon, for the sake of the argument, this homage to Mr. Paine, and suppose that though he gave full credit to the pure morals of our Saviour, he nevertheless believed the Bible to be an infamous book. Would it therefore follow that he might publicly maintain it in print?—This is a proposition too large to be supported. Suppose him to have cast off with the belief of divine revelation every sense of moral obligation, would it follow that he might do just as he pleased, and that if he thought there was no crime in adultery or lewdness, he might lie with our wives and daughters without being brought to an account? In fact *intellectual differences of opinion* are respected, and great latitude ought to be allowed to writings, whether they regard religion or government; but not when they are obviously intended to strike at the very foundations of both. Mr. Paine has experienced this distinction in the disregard or rather the *abhorrence*, of those who were the principal admirers of his latest political works—a fact admitted by Mr. Kyd himself, who says, we should therefore allow that this work has done some good.

Mr. Kyd has next asked how it can possibly be believed, that if God had intended an universal revelation, it would have been committed to the charge of our Saviour in so humble a condition, and speaking *one language only*, when the earth was filled with so many distant nations and tongues whose very existence was unknown to the Jews when the Gospel was first preached. To this it is only necessary to reply, that the prophets, many ages before this period, by lights which could not be human, had established the necessity and the truth of our Saviour's mysterious advent—had foretold even the most minute circumstances which should attend it, and had proclaimed with one voice its final and triumphant progress. What besides becomes of Mr. Kyd's notable objection that one language only was known to the Jews, and according to him even to our Saviour himself, when he could confer upon his disciples the gift of *all tongues* that were heard or known throughout the countries where they were to preach, and when the Almighty had declared by the mouths of his prophets, that the gospel should reach to the uttermost ends of the earth. Not of the earth then known, though men's interpretations of scripture could only expand with their expanding knowledge, but its entire circumference, embracing the greatest empires that now exist in it, at the distance of two thousand years?—To recur to Mr. Kyd's objection of *one language only*; has not the Bible been already translated into the languages of the most civilized and powerful nations, collecting the heathen out of darkness? And is there a person of the least knowledge who suffers himself to doubt that in the most comprehensive meaning of scrip-

ture the prophecy of its universal reception is fast fulfilling, and certainly must be fulfilled. For my own part, gentlemen of the jury, I have no difficulty in saying to you, not as counsel in this cause, but *speaking upon my honour for myself* (and I claim to be considered as an equal authority at least to Mr. Paine, on the evidence which ought to establish any truth), that the universal dispersion of the Jews throughout the world, their unexampled sufferings, and their invariably distinguishing characteristics when compared with the histories of all other nations and with the most ancient predictions of their own lawgivers and prophets concerning them, would be amply sufficient to support the truths of the Christian religion if every other record or testimony were sunk to the very bottom of the sea.*

I shall, therefore, close here all that I have thought it necessary to say in vindication of the Bible; and indeed I might have omitted it altogether, if I had sooner recollected to remind you of a most material part of my learned friend's address, which had very nearly escaped me.

"I should be guilty," he said, "of *blasphemy to you, gentlemen of the jury, if I could suppose you had not all of you read the bible. It is impossible that any of you should be so lost to the sense of the duty which you have to discharge, as to come here to sit in judgment on the defendant without that indispensable qualification.*"

Now, this being his preface to the whole matter he urges against Scripture, ought I to have been called upon for any kind of reply? He acknowledges that you have no qualification or jurisdiction to sit in judgment upon the defendant, but as you have read and believe in the Gospel, and as you have been sworn in the presence of Almighty God and

* Shortly after the trial of Williams, this solemn declaration of Mr. Erskine was cited from the pulpit by a late eminent and highly respected prelate of our church, in the following words: "We may then safely consider this prophecy as an unquestionable proof of the divine foreknowledge of our Lord, and the divine authority of the Gospel; and on this ground only (were it necessary) we might securely rest the whole fabric of our religion. Indeed, this remarkable prediction has always been considered, by every impartial person, as one of the most powerful arguments in favour of Christianity; and in our own times, more particularly, a man of distinguished talents and acknowledged eminence in his profession, and in the constant habit of weighing, sifting, and scrutinizing evidence with the minutest accuracy in courts of justice, has publicly declared, that he considered this prophecy, if there were nothing else to support Christianity, as *absolutely irresistible.*" Lectures on the Gospel of St. Matthew, by the right rev. Beilby Porteus D. D. Lord Bishop of London, Vol. 2, p. 212, 10th edit.

in the feed of your country to administer justice according to it; yet, in almost the same breath, he asks you to declare it, by your verdict, to be false and wicked!—I will, therefore, follow my learned friend no longer in answer to his observations; not at all from disrespect to him, because he has shown great skill and talent in a desperate case which he was bound in professional duty to maintain; but because I feel that I have already discharged even more than the duty that was cast upon myself, being of opinion that I have long ago clearly established that the book now before you, is not at all entitled to that rational and useful protection which is denied to the *gross licentiousness* of the press, whilst it gives lustre and value to its freedom.

I will conclude, therefore, with this general remark; that if on taking the book with you out of court you shall find, notwithstanding all I have said to you, that it contains grave, serious, conscientious considerations (however erroneous) on a subject admitted to be of the deepest importance, addressed to, and to be answered by enlightened men; whereby any errors in religion, if they really have an existence might be purged and done away, I should freely consent to an acquittal, *although the law of England might not sanction it*: but in a case like this, it certainly does not require the authority of the many solemn judgments on the subject, to establish beyond all doubt or question that in a country whose government and constitution rest for their very foundations upon the truths of the Christian religion, a bold, impious, blasphemous and public reprobation of them, must be a HIGH CRIME AND MISDEMEANOR.

I have only, therefore, to remind you, gentlemen, that this indictment was not preferred from any idea that the Christian religion could be affected in its character or irresistible progress, by this disgusting and contemptible work; but to prevent its circulation amongst the industrious poor, too much engaged in the support of their families by their labour, and too uninformed to be secure against artful wickedness. Of all human beings they stand most in need of the consolations of religion, and the country has the deepest stake in their enjoying it, not only from the protection which it owes them, but because NO MAN CAN BE EXPECTED TO BE FAITHFUL TO THE AUTHORITY OF MAN WHO REVOLTS AGAINST THE GOVERNMENT OF GOD.

SUMMING UP.

Lord Kenyon.—Gentlemen of the Jury:—Being now in possession of all the facts of this case, and convinced, in my own mind, what conclusion ought to be drawn from them, I am not sure that it is necessary to say any thing at all to you upon the subject.

Gentlemen, before you proceed to decide on the merits of this or any other cause, it is proper to see whether the parties litigating

stand in a fair light before you. I was extremely hurt, when the learned counsel for the defendant thought fit to state to you, with very considerable emphasis, and a very determined tone of voice, that this was a scandalous prosecution. I cannot help wishing that that sentence had not been uttered. Who commenced this prosecution, I certainly know not. But from what fell from the very learned counsel who has just sat down, I am inclined to suppose it proceeded from a society of gentlemen, instituted for the most important of all purposes—for preserving the morals of the people—a society composed of clergymen, and laymen of the most respectable character in the kingdom; who, feeling how the country is overrun with profligacy and wickedness, which boldly raise their heads in defiance of the law of the land, were determined to see whether, in the first place, by admonition and advice, they could not stop the torrent of vice and immorality; and secondly, if that should fail, to try what could be done by punishment. If people with the very best intentions carry on prosecutions that are oppressive, the end may not always perhaps sanctify the means. But the manner in which this prosecution has been conducted, is certainly not oppressive; for, instead of proceeding in the more expensive mode by information, the prosecutors went before a grand jury of the county; and it was necessary to obtain the opinion of that grand jury before the party could be put in process.

Gentlemen, we sit here in a Christian assembly, to administer the laws of the land, and I am to take my knowledge of what the law is, from that which has been sanctioned by a great variety of legal decisions. I am bound to state to you what my predecessors in Mr. Woolsten's case (2 Strange, 884) stated, half a century ago in this court, of which I am an humble member, namely, that the Christian religion is part of the law of the land. Christianity from its earliest institution met with its opposers. Its professors were very soon called upon to publish their apologies for the doctrines they had embraced: In what manner they did that, and whether they had the advantage of their adversaries, or sunk under the superiority of their arguments, mankind for near two thousand years have had an opportunity of judging. They have seen what Julian, Justin Martyr, and other apologists have written, and have been of opinion that the argument was in favour of those very publications. The world has been lately favoured with another apology from a most learned and respectable jurist, who calls his work "*An Apology for the Christian Religion*." I shall not debate between the merits of the one and the other. The publications themselves are in the hands of the world; and I sincerely wish in the concluding language of the work to which I have just referred (I do not affect to use the very words), I sincerely wish that the author

of the work in question, may become a partaker of that faith in revealed religion, which he has so grossly defamed, and may be enabled, to make his peace with God, for that disorder which he has endeavoured, to the utmost of his power, to introduce into society. We have heard to-day, that the light of nature, and the contemplation of the works of creation are sufficient, without any other revelation of the Divine will. Socrates, Plato, Xenophon, Tully—each of them in their turns, professed they wanted other lights; and knowing and confessing that God was good, they took it for granted the time would come when he would impart a farther revelation of his will to mankind. Though they walked, as it were, through a cloud, darkly, they hoped their posterity would almost see God face to face. This condition of mankind has met with reprehension to-day. But I shall not pursue this argument. I am fully impressed with the great truths of religion, which, thank God, I was taught in my early years to believe, and which the hour of reflection and inquiry, instead of producing any doubt, has fully confirmed me in. I expected the learned counsel for the defendant would have differed the case of the publisher from that of the author of this work; that he would have endeavoured to convince you that whatever guilt might belong to the author, nothing was imputable to the publisher. He has, however, to my utter surprise, exactly reversed the case. He tells you it was originally published at Paris in 1794: that the feelings of the author's friends were wounded by this work, which I call a nefarious publication, and that it was in a great measure forgotten; and you are now called upon to judge of the merits or demerits of the publisher, who has brought forth a still-born work, forgotten by every body, till he ventured in defiance of the verdicts of mankind on the author's political works, to send it forth among the inhabitants of this country. Unless it was for the most malignant purposes, I cannot conceive how it was published. It is however for you to judge of it, and to do justice between the public and the defendant.

The Jury instantly found the defendant—GUILTY.

Lord Kenyon.—I have observed several persons, very likely from curiosity, taking notes of what passed here. This publication is so shocking, that I hope nobody will publish this: I mean that a general detail of it will not make any part of that publication. Nobody who has any regard to decency: nobody who has any regard to their own interest will endeavour to disseminate this publication by publishing what has passed to-day.

November 27th, 1797.

The Honourable Thomas Erskine.—My VOL. XXVI.

lord;—In this case of the king against Thomas Williams, I am to move your lordships for judgment.

Court.—We shall not give judgment in that case to-day. It must stand over.

The Honourable Thomas Erskine.—My lords, that being the case, your lordships thinking it not fit to pronounce judgment to-day, you will pardon me if I think it necessary to say a few words to explain why the defendant, upon so very important a conviction as that which exists in the present instance, should not have been brought up sooner to receive judgment of the Court; and why he appears at so late a period of the term before your lordships.

My lords, with respect to the prosecution, I felt it at the moment of the trial as I feel it now, of infinite importance to the public; and there is no transaction of my humble life, my lords, that I look back upon with such heart-felt satisfaction as the share I had in being instrumental in protecting the interests of religion and morals, which, most unquestionably, are the foundation, not only of all subordination to the government of a country, but to all the interests of civil society in all parts of the world.

My lords, a considerable length of time has elapsed since the conviction of the defendant took place; and, though it is difficult to tell a nation by the head, yet as far as I have been able to collect the sentiments of the public, I believe no proceeding that ever took place, in this or any other court, has given more general satisfaction than this conviction has done. I make use of the word "general," because most undoubtedly the satisfaction has not been universal; the exception I am about to state accounts for, and is the reason why I present myself in this part of the term, and I think it my duty not to insist upon your lordships doing that which but for a very extraordinary interposition, it would have been of course for your lordships to do.

Subsequent to the conviction of the defendant, he wrote to me a very proper letter, and he intreated my interposition with the prosecutors, doing justice to the principles upon which they proceed, and conceiving, as he very justly conceives, that his prosecutors were honourable and humane persons, and believing, as I know it is, that the prosecution is single-minded, and proceeding from the purest and most honourable motives. In that he sets forth, unaffectedly, his deep regret and sorrow for having been guilty of the offence for which he was convicted, and stating his family to be under the pressure of considerable distress, so that I thought it not at all beneath me to relieve him, so far as to tell him I would lay his case before the prosecutors, as he had represented it to me. I intended to do it at an earlier period, but I had not an opportunity; it was, therefore, my intention, without presenting him before your lordships to-day, to have moved to let the defendant

stand over upon his own recognizance, and to reserve the judgment until he had an opportunity of making his own application to the prosecutors? but, my lords, to my utter astonishment, I found the prosecutors were put into a situation which involved not only their character, but which, if not noticed in due season, in a proper manner, it may be said involved the law, religion, morality and justice of the country; and which might have been at stake: For, whilst the defendant was conducting himself with this submission and humility, which rendered him an object of clemency, his attorney, who owed him the most dutiful and attentive service, and who was bound to maintain the interest and safety of his client, thought fit, in the most public manner, in the Court of Common Pleas, to call upon the attorney for the prosecution for his determination; and to say, We durst not bring him (the Defendant) up for judgment; and he has endeavoured to prevent his making that submission to the authority of the Court, but which he has, however, voluntarily done.

Mr. Martin* has thought fit not merely to dispute your lordship's jurisdiction, but, as I understand, has circulated, throughout every part of the country he was able, a printed defamation of the jury, the Court, and its proceedings. As to myself, I will say nothing, for I am no magistrate; and, if I have been guilty of any thing improper, my character, of course, must sink in proportion; if I am right, I freely forgive Mr. Martin every thing that related to me, but I dare say, at the time he composed that libel, he did not just recollect the share I had in defending his life.†

My lords, when I found this I must necessarily suppose the defendant was a party to this defamatory libel, and that there was an influence practised upon him to prevent his submission to the authority of the court; and, when I found that audacious defiance held out to the prosecutors, and to us, as the persons entrusted with it, he therefore received notice to stand here to day. But, subsequent to that time, it appears that the defendant is no party to it, as he will inform your lordships and has declared to me; but that he continues in that proper spirit of submission which induced him originally to make his representation to me, and has a reverence for the law and its authority, but that his attorney has endeavoured to infuse into him a disregard to both. That he stands bowing with submission to the verdict of the jury which has been pronounced against him.

In consequence of that, having had notice to come up so very lately it is scarcely within, perhaps, the rules of the court to ask for judgment against him. Such, my lords, is the

case of the unhappy man before you: and, it being so, I have taken it upon myself, and do take it upon myself, as counsel for the prosecution, to entreat of the Court that he may stand upon his bail till the fourth day of next term, that he may have an opportunity of presenting himself to the court, and stating also, I hope, by his counsel, all matters that may serve him when he stands for judgment; as it would be cruel conclude him in consequence of the wicked representations of his attorney, who so improperly represents him, and who has in vain tried to seduce him from his duty and the pursuit of his true interest.

My lords, I am not at present possessed of the proof of Mr. Martin's being the publisher, or author, but as soon as I am possessed of the proof of his being the publisher or author of that letter, I shall certainly apply to the court to remove him from the roll.

Court.—At present the defendant must continue upon his recognizance. When he comes up he will produce the best proofs he can in mitigation.

It is impossible for us to enter into that at present, but it will have its proper effect.

The Honourable *Thomas Erskine*.—I hope your lordships think I have not done improperly.

Court.—Certainly not, sir.

Mr. *Martin*.—Gentlemen, during the last five years I have been constantly in a state to be called upon by some one or other.

Court.—There is no cause of yours before the Court. If you should address the Court, you would most probably begin either by avowing or denying the pamphlet. We cannot hear you.

Mr. *Martin*.—Let Mr. Erskine make his motion whenever he pleases, I am ready to meet him.

February 5th, 1798.

The Honourable *Thomas Erskine*.—My lord, I now move for the judgment of the Court in the case of Thomas Williams.

Lord *Kenyon*.—This was an indictment against Thomas Williams for publishing a book, called the "Age of Reason," &c.

[His lordship here read the report of the evidence given on the part of the prosecution.]

The parts of the book that were charged as being blasphemous and impious were read at the trial, but they are so offensive to religion and good order, that I suppose nobody will wish to have them read now.

The next circumstance is, that on the part of the defendant a notice was given to the prosecutor to produce at the trial of the cause a book called the Bible.

On the part of the defendant no witnesses were called; but his counsel said the charge was improperly brought, and that it was a

* See what has been said concerning this person, in a note, *ante*, p. 671.

† This refers to the proceedings against Martin for high treason, in the year 1795.

right which every man had (which they certainly have), to investigate religion, &c.

[Lord Kenyon here stated the different points of Mr. Kyd's argument at the trial.]

Upon reflecting upon my conduct during the trial, I have reason to accuse myself of improper conduct for permitting such arguments to be used. For, if I remember the conduct of the Court in causes of this nature, I should have remembered the opinion of the whole court in the case of the King and Woolston, in second Strange 834. The Court would not endure, would not suffer any thing to be said against the established religion of the country.

The order and decorum of the court, which has been observed in almost every instance through my long professional life, has been guarded against any thing of that kind: it has been protected by the decorum of the bar. It is impossible for the Court to foresee when a sentence begins how it will end, and, sometimes, mischief is done before we are sure that the sentence will conclude in an offensive manner. I must say this, to show that I ought not to have suffered what was spoken upon the trial in some parts of the defence.

I am sorry to say that the prosecution, which was carried on with all the liberality possible, was in plain terms broadly stated to the jury to be "a scandalous prosecution." I did express what appeared to me, and left it to the jury whether those opprobrious terms belonged to the prosecution; I think it is pretty apparent the jury thought as I did; he was found Guilty.

[The affidavit of Thomas Williams read.]

"Thomas Williams of Little Turnstile, Holborn, in the county of Middlesex, bookseller, the above named defendant, maketh oath and saith, that he hath always understood and verily believes that the pamphlet called *the Age of Reason* was first published in London some time in or about the beginning of the year 1794, and was publicly sold by several booksellers there, and went through several editions; and that no prosecution as far as this deponent has been able to learn, was either instituted or threatened against any person for selling the said pamphlet till he was himself prosecuted for the same. And this deponent further saith that as he had not heard that any such prosecution had been instituted or threatened against any person whatever, he was not aware that by selling the said work he was committing an offence against the laws of his country; nor had he any intention thereby to insult or vilify the established religion, but considered the work merely as a book of controversy, in which light he was the rather led to consider it from its having

been thought worthy of an answer not only by the learned bishop of Landaff, as this deponent has been informed and verily believes, but by several other persons of established reputation in the learned world. And this deponent further saith, that since his conviction he has not sold or given away or in any manner disposed of a single copy of the said pamphlet called *the Age of Reason*, nor does he know or believe that a single copy thereof has been sold or given away or in any manner disposed of by any person of his family or any person whatsoever under his influence or control; nor is it his intention ever to sell or give away or in any manner to publish the said work again. And this deponent further saith that though, since his conviction, he has endeavoured so to demean himself as to satisfy the prosecutors and the Court that he had no malevolent intention in selling the said work; and that so far as the conduct of his late attorney may have tended to counteract the effect of such endeavour, this deponent saith it has been without his approbation and directly in opposition to his wish, and that so far from this deponent's having united with his late attorney in holding the court or prosecutors at defiance, he was totally ignorant of that part of his said late attorney's conduct till within two days of the time when he was brought into court last term, and he saith that not only had his late attorney in such conduct acted without communication with this deponent, but that this deponent highly disapproved of such conduct, not only on account of its dangerous tendency as to himself personally, but from a conviction of the gross impropriety of it with respect to the public and the law. And this deponent further saith, that his late attorney finding himself, as this deponent verily believes, disappointed in his endeavour to unite this deponent with himself in holding the Court and the prosecutors at defiance, he became this deponent's personal enemy; and, as this deponent is informed and believes, accused the counsel for the prosecution of conspiring with this deponent's counsel and this deponent himself, to elude the justice of the country, and assumed a merit to himself in having counteracted that conspiracy. And this deponent further saith that he has a wife and two children, the eldest of which is about five years old and the youngest five months, whose support depends entirely on this deponent's labour, and who will be reduced to great distress should this honourable court be induced to pass a heavy sentence on this deponent.

"THOMAS WILLIAMS."

Sworn 3rd February 1798, in Court.

Mr. *Ayd*.—My lord; I think I shall best discharge my duty to my client, by satisfying myself with stating that I can bear personal testimony of his having conducted himself in the manner stated in his affidavit.

The Honourable *Thomas Erskine*.—My lords; The circumstances attending this case are so exceedingly peculiar, and the subject of it, is so deeply connected with the public interest, that before the Court pronounces its judgment, I conceive it my duty to make a very few observations to your lordships.

My lords, it is true that this work had been published, and had been in circulation for a considerable length of time before the publication by the defendant; but, my lord, that circulation at last became so very extensive, and, from the quarters in which it was pushed, became, at the same time, so extremely pernicious and dangerous to the public, that the prosecutors thought it a duty they owed to bring it before your lordship, and a jury of this court.

My lords, the jury was a respectable one, and I believe found no difficulty in coming to the judgment they pronounced. Certainly it is true, and I owe it, most undoubtedly in justice to the person who now stands upon the floor, to state, that I received from him, very soon after his conviction, a letter stating his contrition for the offence he had committed, and stating he was desirous of making every atonement in his power to the laws of his country, which he had offended, and to which he was ready to submit. I certainly thought it my duty to lay that case before the prosecutors for their consideration; but, before I had any opportunity of consulting with them upon the case of so much moment to the public, your lordship will easily judge of my surprise to find, that my conduct (which, indeed was of no consequence), but that the conduct of the Court, and the conduct of the Jury, had been arraigned in the public prints; and it was supposed a sort of revolution had taken place in the jurisprudence of the country to affect the defendant. That the Court, the counsel, and the Jury, had united to attack the liberty of the press, as acknowledged by the law of England; and that the Court, instead of doing its duty, had led the way to pronouncing an unjust verdict. My lords, it is very difficult to separate the person who stands for judgment, and the person who chooses to defend him in court; I therefore, supposed, when it was published, that he consented to the slander contained in that letter against the administration of justice; and I instantly brought him up for the judgment of the Court in the former term, but I learnt that he was no party to the work, and that he wholly dissented from it; and, therefore, I did not then press for the judgment. I mention this circumstance to show why it is that the defendant at so late a time from the conviction stands before the Court to receive judgment.

My lords, it was well observed by an able and excellent person, whose loss we all deplore in the court, and shall long continue to deplore, I mean the late worthy and learned Mr. Lee, that the empire of folly is very extensive; and it is therefore not very difficult for men of the meanest ability to abuse persons whose situations do not enable them to form accurate judgments of things: I think that observation will apply, in some respects, to the case now before your lordships.

My lords, this prosecution has been so much arraigned in different quarters, it is therefore I make the few observations I am about to make.

It has been said, that the law of England knows no right to suppress a book; and that this is an attempt to suppress a book. My lords, the judgment which I ask of your lordships to pronounce to-day, founded upon a verdict, which the jury pronounced upon the trial, suppresses no book: the law of England acknowledges no licenser, neither before nor after publication. It should be known and understood, that after judgment, this book is as open to publication as it was before; but, let him that publishes it, remember that he trespasses against the law of the land, which now gives him notice that it will be subject to the determination of a court of law hereafter. If he can show that any of the arguments that fell from the counsel at the bar were not proper, but misled the jury: if any thing that fell from your lordship was inconsistent with the rules of law, and contrary to that duty you owe the country: if any testimony was given contrary to the rules of evidence: if the jury were mistaken, or as it has been said, were perjured: if any thing was done at the trial of this cause, inconsistent with the due and wholesome administration of justice: If any of those things have been discovered, and the public mind has become more enlightened than it was at the time of giving this verdict, your lordships know that the arguments which led to the judgment given, can never be given in evidence against any English subject that may publish this book: the public are therefore secure on all sides, as the law expresses it, shall be secured; but, let it be known the law has not been infringed upon, and that the defendant is answerable to the judgment which your lordships shall pronounce.

My lords, I certainly am bound, as far as I know any thing of the matter personally, to state that I know the defendant's affidavit, which your lordships have heard read, to be true, and to give testimony of its truth. He was told by his late attorney, that he had nothing to fear in this case: that the Court dare not punish him; that he had only to come and walk through it, and to defy your lordships to punish him: and it is equally true, that when he found, as he states in his affidavit, that he was deceived and misled, he did what he states he did to reconcile himself

to his prosecutors; and by refusing to follow the pernicious advice of his attorney, that attorney became his personal enemy.

My lords, of him I can now say nothing; for, my lords, the grave which swallows up every thing, has disappointed all comment upon that unfortunate man. He died soon after the last term.

My lords, I thought it my duty to mention these circumstances, because I know that the offence of which the defendant stands convicted, is so enormous in its nature, that it requires the consideration of the Court. I know, if the defendant stood before your lordships, without any circumstances of mitigation, without any atonement to the insulted laws of his country, I know your lordships would be bound by the oaths you have taken, to pronounce upon him a most serious and severe judgment; and, therefore, recollecting this prosecution was brought to vindicate the honour and character of the Christian religion, I thought I owed it to the prisoner not to forget the charity which it so very peculiarly inculcates.*

* Between this day, and the day of passing sentence, circumstances took place which are narrated in the following statement:

"At a meeting of the PROCLAMATION SOCIETY at the BISHOP of LONDON's, on the 27th of February, 1798:

"Present:—The BISHOP of LONDON
" [Porteus] P. in the chair.

"General SIR GEORGE OSBORNE, Bart.

"Mr. FREEMAN.

"Mr. S. SMITH.

"Mr. WILBERFORCE, V. P.

"The BISHOP of DURHAM, [Barrington].

"Lord WILLOUGHBY DE BROKE.

"Mr. BOWDLER.

"Sir A. EDMONSTON, Bart.

"Sir J. ANDREWS, Bart.

"Mr. MARTIN.

"The BISHOP of ST. ASAPH, [Bagot.]

"Mr. BERNARD.

"Mr. WAY.

"Mr. Grant.

"Sir WILLIAM DOLBEK, Bart.

"The following Resolutions were agreed to:

"The secretary reported that Mr. Erskine had intimated to him an opinion, that when the defendant Williams was brought into court to receive final judgment, the society would have a proper opportunity of manifesting their charity, and christian forbearance, by instructing their counsel to state, that they were satisfied with the punishment already inflicted on Williams by his commitment to Newgate. After a full consideration of the subject.

"Resolved, unanimously, That as, on the one hand, the Society do not wish to press for severe judgment on the offender, and as, on the other hand, they do not feel themselves, justified in expressing a wish for

Lord Kenyon.—Let him stand committed new to Newgate, and be brought up the fourth day of next term to receive judgment.

April 28th, 1798.

Mr. Justice Ashurst.—Thomas Williams, you have been tried and found guilty of publishing a most heinous and blasphemous libel, both upon the Old and New Testament, tending to sap the foundation of our holy religion; to traduce it, and to represent the life and history of our blessed Saviour, as a most incredible tale. You have, likewise, introduced into this libel certain blasphemies against Almighty God himself, which the most impious and diabolical mind could imagine it was in the heart of man to write; I forbear to go into the particulars, as they ought to be consigned to eternal oblivion. Although the Almighty does not stand in need of the feeble aid of mortals to vindicate his honour and law, it is nevertheless highly fit that courts of judicature should show their abhorrence

"lenity, they desire the secretary to inform "Mr. Erskine of their unanimous determination to leave the judgment entirely with "the Court."

And at a subsequent meeting which was held at the bishop of Durham's on the report of the secretary, that he had waited on Mr. Erskine with a copy of the above minutes, and that Mr. Erskine declined being farther concerned for the Society, and had returned their retainer,

"It was resolved, That the secretary should "communicate to the Society's remaining "counsel, previously to Williams's receiving "the judgment of the Court, the unanimous "determination of the numerous meeting "held at the bishop of London's on the 27th "of February last, together with such other "particulars as may be necessary for their "complete information."

A statement of the circumstances which induced lord Erskine to decline proceeding any farther in this case, has been communicated to me by him, in reply to an application for information on the subject. With his permission it is here inserted.

"Buchan Hill Farm,

"February 7th, 1819.

"Dear Sir;—You are well justified in requiring to know, why, in the case of the "King against Williams, for publishing Thomas Paine's Age of Reason, after receiving "and acting under a general retainer, and "convicting the defendant, I had not only "refused to pray judgment against him, but "had cancelled the retainer altogether. The "inviolable obligation of retainers according "to the rules of the profession, regarding "them, is of immense importance to the public, and in the British State Trials, every

and detestation of people capable of sending into the world such infamous and wicked books. Indeed, all offences of this kind are

" thing should be found, which connects itself
" with the liberty and security of the people
" in our courts of justice, which essentially
" depend upon the integrity and independence
" of the bar.

" I believe no member of the profession
" had ever the occasion of manifesting more
" strongly than myself, his sense of the sub-
" ject's right to choose his own counsel against
" all power or influence in the scale against
" him. When Attorney General to the Prince
" of Wales (now Prince Regent) I was re-
" tained by THOMAS PAINE, in person, to de-
" fend him on his approaching trial for pub-
" lishing the Second Part of his ' Rights of
" ' Man;' but it was soon intimated to me by
" high authority, that it was considered to be
" incompatible with my situation, and the
" Prince himself, in the most friendly manner
" acquainted me, that it was highly displeas-
" ing to the King, and that I ought to endea-
" vour to explain my conduct, which I imme-
" diately did in a letter to *his majesty himself*;
" in which, after expressing my sincere at-
" tachment to his person, and to the constitu-
" tion of the kingdom, attacked in the work
" which was to be defended, I took the li-
" berty to claim as an invaluable part of that
" very constitution, the unquestionable right
" of the subject to make his defence, by any
" counsel of *his own free choice, if not previ-
" ously retained, or engaged from office by the
" crown,* and that there was no other way of
" deciding, whether that was, or was not my
" own situation as Attorney General to the
" Prince, than by referring *according to cus-
" tom,* that question to the bar, which I was
" perfectly willing, and even desirous to do.
" In a few days afterwards, I received, through
" my friend the late admiral Paine, a most
" gracious message from the Prince, express-
" ing his deep regret in feeling himself obliged
" to receive my resignation, which was ac-
" cordingly sent. But I owe it to his Royal
" Highness, to express my opinion, that cir-
" cumstanced as he was, he had no other
" course to take in those disgraceful and dis-
" gusting times, and that my retainer for
" Paine, was made a pretext by the king's
" ministers for my removal, because my wor-
" thy and excellent friend, sir Arthur Piggott,
" was removed from the office of the Prince's
" Solicitor General, at the very same moment,
" although he had nothing whatever to do
" with Mr. Paine, or his book. The fact is,
" that we were both, I believe, at that time,
" members of a society for the reform of
" parliament, called the ' Friends of the
" ' People.'

" It would, however, be most unjust as well
" as ungrateful to the Prince Regent, not to
" add that in a few years afterwards, his royal
" highness, of *his own mere motion,* sent for

not only offences to God, but crimes against
the law of the land, and are punishable as
such, inasmuch as they tend to destroy those

" me to Carlton House, whilst he was still in
" bed under a severe illness, and, taking me
" most graciously by the hand, said to me
" that though he was not, at all qualified to
" judge of Retainers, nor to appreciate the
" correctness or incorrectness of my conduct
" in the instance that had separated us, yet
" that being convinced I had acted from the
" purest motives, he wished most publicly to
" manifest that opinion, and therefore direct-
" ed me to go immediately to Somerset House,
" and to bring with me for his execution the
" patent of chancellor to his royal highness,
" which he said he had always designed for
" me: adding, that owing to my being too
" young when his establishment was first
" fixed, he had declined having a chancellor
" at that time, that during our separation he
" had been more than once anxious to revive it,
" which he had refused to do, looking forward
" to this occasion, and I accordingly held the
" revived office of chancellor to the Prince of
" Wales until I was appointed chancellor to
" the King, when I resigned it in conformity
" with the only precedent in the records of
" the duchy of Cornwall; viz. that of lord
" Bacon, who was chancellor to Henry,
" Prince of Wales, and whose resignation is
" there recorded, because of his acceptance of
" the Great Seal, in the reign of king James
" the First.

" I have troubled you with this short his-
" tory for *three reasons*;

" First, To show that I do not think *lightly*
" of Retainers.

" Secondly, because the memory of acts
" that are highly honourable in men who are
" called to the government of nations, is not
" only justice to them but useful to be trea-
" sured up in the minds of a people.

" Thirdly, because it may remind some who
" are but too apt to think that *unprincipled
" subserviency* is the surest road to preferment,
" that *honesty is the best policy*; since when
" the great seal was afterwards vacant, his
" royal highness, in conjunction with my re-
" vered friend Charles Fox, considered my
" succession as indispensable in the formation
" of the new administration, presented me
" with a seal with my initial and a coronet
" engraved on it, and desired me to take Res-
" tormel castle as the designation of my title,
" as belonging to the duchy of Cornwall, and
" the seat of the most ancient dukes of Corn-
" wall.

" Having convicted Williams as will appear
" by your report of his trial, and before he
" had notice to attend the court to receive
" judgment, I happened to pass one day
" through the old Turnstile from Holborn, in
" my way to Lincoln's Inn Fields, when in
" the narrowest part of it, I felt something
" pulling me by the coat, when on turning

obligations whereby civil society is bound together; and it is upon this ground that the Christian religion constitutes part of the law of England; but that law, without the means of enforcing its precepts, would be but a dead letter: Whenever those infamous works ap-

"round, I saw a woman at my feet, bathed in tears and emaciated with disease and sorrow, who continued almost to drag me into a miserable hovel in the passage, where I found she was attending upon two or three unhappy children in the confluent small-pox, and in the same apartment, not above ten or twelve feet square, the wretched man I had convicted was sewing up *little religious tracts* which had been his principal employment in his trade, and I was fully convinced that his poverty and not his will had led to the publication of this infamous book, as without any kind of *attribution for mercy on my part*, he voluntarily and eagerly engaged to find out all the copies in circulation, and to bring them to me to be destroyed.

"I was most deeply affected with what I had seen, and feeling the strongest impression that it offered a happy opportunity to the prosecutors of vindicating and rendering *universally popular* the cause in which they had succeeded, I wrote my opinion to that effect, observing (if I well remember) that mercy being the grand characteristic of the Christian religion which had been defamed and insulted, it might be here exercised not only safely, but more usefully to the object of the prosecution, than by the most severe judgment which must be attended with the ruin of this helpless family.

"My advice was most respectfully received by the Society, and I have no doubt honestly rejected, because that most excellent prelate, bishop Porteus and many other honourable persons concurred in rejecting it; but I had still a duty of my own to perform, considering myself not as counsel for the Society, but for the Crown. If I had been engaged for all or any of the individuals composing it, prosecuting by indictment for any *personal injury* punishable by indictment, and had convicted a defendant, I must have implicitly followed my instructions, however inconsistent with my own ideas of humanity or moderation, because every man who is injured has a clear right to demand the highest penalty which the law will inflict; but in the present instance I was in fact not retained at all, but responsible to the crown for my conduct. Such a voluntary Society, however respectable or useful, having received no injury, could not erect itself into a *custos morum*, and claim a right to dictate to counsel who had consented to be employed on the part of the king for the ends of justice only.

"The bar, indeed, had, in my own experience, rejected a retainer of that anomalous

description. Lord Stopford, an officer in the first regiment of Guards, being on guard at the palace on the king's birth-day, having thought it his duty to remove obstructions, and having laid hold of a gentleman in the throng, had an action brought against him; and the regiment, approving of his conduct, having resolved to defend him at their own expense, which they had a clear right to do, directed me to be retained to defend him, but the late Mr. Lowten their solicitor, instead of entering the retainer for lord Stopford, entered it for the first regiment of Guards, and the duke of York, as their colonel, afterwards consulted with me on the subject; but before the trial, the plaintiff came in person to my chambers, with his attorney to retain me, and being informed I was retained against him, desired to inspect my retainer book, when seeing no other retainer than for the *First Regiment of Guards*, his attorney objected to its obligation, and requested me to leave it as usual to the decision of the bar, who considering it as no retainer, I was obliged to receive that of the plaintiff, and afterwards as his counsel obtained a verdict against lord Stopford in Westminster Hall.

"Upon the present occasion, therefore, I made up my mind to act for myself, and not only not to pray judgment, but to cancel the *irregular* retainer altogether, by striking it out of my book, and judgment being afterwards prayed by another counsel, the defendant, as must have been expected, was sentenced to a severe imprisonment, but Mr. Perry to his great honour exerting himself for the protection of his helpless family, raised a considerable sum of money for their support, without which they must have perished.

"Whether I was right or wrong I will not undertake to say; but I am most decidedly of opinion that if my advice had been followed, and the repentant publisher had been made the willing instrument of stigmatizing and suppressing what he had published, Paine's *Age of Reason* would never again have been printed in England, whereas I have been informed that it has since been again in circulation, and that a prosecution by the attorney general is now pending for its suppression; of the merits of which, however, or of the guilt or innocence of the person accused, I am wholly ignorant, and can only wish that justice may be done.

"I have the honour to be, with great regard, your faithful humble servant,
"T. J. Howell, esq. E. S. K. N. E."

tions, the dread of future punishments. It highly then behoves those who are vested with authority to protect our holy religion, to persevere to protect it, and to punish those who are guilty of such offences. I cannot help adding, that the crime is farther aggravated by the motive in which it was conceived, as there can be no temptation for it; there can be no hope of gain, nor any sudden impulse of passion, to which man is so often exposed by the frailty of his nature: but it could have proceeded merely from a cool and malignant spirit.

I must now make an observation or two upon the affidavit you have made. You state that the pamphlet which is the object of this prosecution was first published in the year 1794, and was publicly sold by several booksellers: this is, in effect, saying that because there are many men as wicked as yourself, you ought not to be punished: For my own part, I draw a direct contrary inference; for, if there are many who are so much more wicked than the others, as to publish so atrocious a libel, it seems to me proper, that a severe example should be made; and it is a pity it had not been done sooner. You farther add, that you were not aware you were committing an offence against the law, or had any intention to detract from or vilify the established religion. Can any man who calls himself a Christian, pretend to say the publication of such a work was without that intention? A child who has had common attention shown to his education must know better: But it is fit I should tell you, that ignorance in no case can be allowed as an excuse; the moment a man engages in such a trade as you were carrying on, he contracts and enters into an obligation to see and know that every publication he sends out into the world, is consistent with religion, morality, decency and good manners; and if it is deficient in any of these, he is the person who must be answerable for, and take the consequences; and it is for the interests of all good governments that no such publications should be suffered to poison the minds of the people.

This Court has taken the case into consideration and will not pass so severe a sentence as it perhaps would, only upon account of Mr. Erskine's suggestion, and had it not been

that your attorney behaved so ill upon the occasion; they do not pass so severe a sentence as they would have found themselves bound to have done: Therefore the sentence they pass upon you is, that for this offence you be imprisoned in the House of Correction for the county of Middlesex, there to be kept to hard labour for the space of one year, and then to give security, on your own recognizance, in the sum of One Thousand Pounds, for your good behaviour for the term of your life.

Mr. Williams.—I trust it will not be too great an indulgence that I may have a bed.

Lord Kenyon.—I cannot order that: I dare say you will be treated properly. I wish to have it understood, that this sentence is a very great abatement of the punishment; as in modern times, within the period I have sat in Westminster-hall, three years imprisonment has been ordered for an offence of much less enormity than this; for this publication is horrible to the ears of a Christian.

Saturday next after fifteen days from the Feast-day of Easter, in the thirty-eighth year of King George the Third.

Middlesex.—The King *against* Thomas Williams. The defendant being brought here into Court in custody of the keeper of his majesty's gaol of Newgate by virtue of a Rule of this Court and being by a jury of the country convicted of certain trespasses contempts and grand misdemeanors in publishing certain blasphemous libels whereof he is indicted It is ordered That he the said defendant for his offences aforesaid be imprisoned in the House of Correction in and for the county of Middlesex and there kept to hard labour for the space of one year now next ensuing And that he the said defendant do give security by his own recognizance in the sum of one thousand pounds for his good behaviour during his natural life And he the said defendant is now committed to the custody of the keeper of the said House of Correction to be by him kept in safe custody in execution of this judgment and until he shall have given such security as aforesaid.

By the Court.

622. Trial of DAVID MACLANE for High Treason; before the Court holden under a Special Commission of Oyer and Terminer, at the City of Quebec in the Province of Lower Canada, on Friday the 7th day of July; 27 GEORGE III. A. D. 1797.*

A Special Commission of Oyer and Terminer, was issued on the 24th of May, 1797, under the Great Seal of the province of Lower Canada, empowering the justices thereby assigned, or any three of them (*Quorum unum &c.*) to inquire, hear and determine all high treasons and misprisions of high treasons, committed within the district of Quebec.

The Justices assigned were

The hon. William Osgoode, his majesty's chief justice of the province; the hon. James Monk, chief justice of his majesty's Court of King's bench for the district of Montreal; the hon. Thomas Dunn, Jenkin Williams, and Pierre Amable Debonne, justices of his majesty's Court of King's bench for the district of Quebec; the hon. Paul de Roc De St. Ours; the hon. Hugh Finley, the hon. François Baby, the hon. Joseph De Longueuil, the hon. Pierre Fanet, the hon. James Mac Gill, the hon. John Lees, the hon. Antoine Juchereau Duchesnay, the hon. John Young; members of the Executive Council.

The chief justice of the province and the chief justice of the King's bench of Montreal were of the quorum.

The precept was signed by the chief justice, Mr. Justice Dunn, Mr. Justice Williams, and Mr. Justice Debonne; was tested the twenty-sixth day of May, returnable on Monday, the twelfth day of June, which made fifteen days exclusive between the teste and return. This was ordered upon the precedent of the precept issued for the trial of the Scotch rebels, in 1746.†

On Monday, the 12th of June, the Special Commission was opened at the Court-house in the city of Quebec.

Præsent—The Hon. chief justice Osgoode, the Hon. Mr. Justice Dunn, the hon. Mr. Justice Debonne, the hon. Hugh Finley, the hon. François Baby, the hon. Joseph De Longueuil, the hon. Antoine Juchereau Duchesnay, the hon. John Young.

The Commission was openly read. The sheriff then delivered in the panel of the Grand

Jury, which was called over, and the following gentlemen were sworn.

THE GRAND JURY.

F. LeMaistre, foreman.	George Allsopp.
Peter Stuart.	Louis Duniere.
Jacques Perreault.	Jacob Danford.
Nathaniel Taylor.	Augustin J. Raby.
Louis Germain.	Kenelm Chandler.
John Coffin.	John Craigie.
Hypolite Laforce.	Alexander Dumas.
Comte Dupre.	François Fillion.
Charles Pinguet.	John Pursa.
Louis Turgeon.	Pierre Langlois.
James Frost, esq.	Joseph Drapeau, esq.

After the usual proclamation for silence, the following charge was given to the Grand Jury, by,

Chief Justice Osgoode.

Gentlemen of the Grand Jury;—The bills of indictment for the crime of high treason, that have lately been found by the grand inquest of a neighbouring district, and the recent commitments that have taken place for the same crime in the district of Quebec, afford abundant proof of the expediency of the act passed in the last session of the legislature, for the better preservation of his majesty's government, as by law happily established in this province.—On the present occasion, however, it has not been necessary to resort to any of the powers created under that act; and on account of the formalities and delays incident to the proceedings on an indictment for high treason, as a considerable period of time must necessarily elapse before a trial could be had within the stated terms allotted for the administration of criminal justice;—His excellency the governor has thought proper to direct the special commission you have now heard read, to have. This measure was adopted in tenderness to the parties committed—to relieve them from a long confinement should they be innocent, or for the benefit of a prompt example should they be guilty. It now becomes your duty, gentlemen, in consequence of this commission to inquire into such charges as shall be laid before you, respecting the crimes of high treason, or misprision of treason, within this district, and either to find or to ignore the same; and also to present any persons whom you may know to have committed the like crimes,

* Taken in short-hand, and printed at Quebec by W. Vondelvander, Law printer to his Majesty's most excellent majesty.

† See Post. 1, and, ante, Vol. 18, p. 327.

should any such have come within your knowledge.

In justice to the people of this province it should be observed, that, from the first establishment of the British government in this colony, down to a certain period, the crime of high treason, so far from being committed, had perhaps not been mentioned from the bench, or even held a place in the enumeration of offences likely to be attempted. Till this period, the Canadians, convinced by experience that they had the full enjoyment of every privilege to which their ancestors had been accustomed, and that they were also exempted from many rigorous services incident to a government purely monarchical, contentedly lived under the king's mild dominion, and showed their satisfaction by a cheerful submission to the laws. It need hardly be mentioned that the period to which I allude is that of the sanguinary revolution in France, since which time emissaries have been sent forth, as well native as proselytes, under the pretence of diffusing liberty, to disturb the quiet of all settled governments. Every symptom of disobedience, and the few instances of marked disaffection, that have appeared in this colony, may be traced to this cause of delusion. It is therefore some consolation to reflect that the evil is not of native growth, but has been introduced by the insidious arts of mischievous foreigners, practising on the minds of the ignorant and credulous natives. Since, then, commitments have taken place for crimes hitherto unperpetrated, and till of late unsuspected in this province, it becomes the duty of the bench to explain somewhat more fully, in the charge, the general heads of the offence imputed to the prisoners, that you, gentlemen, may be enabled to apply the principles laid down to the cases that may be brought before you.

At the period when laws were framing, after the first formation of society, it must have occurred as a principle of natural justice, to those employed in reflecting on the subject, that the punishment to be inflicted on crimes should be proportioned to the enormity of the offence. To that end it became necessary to form a scale of crimes, of which the gradations should be regulated by the pernicious tendency of the act committed. The first object in framing laws is to establish certain rights and to secure them, as far as human sanctions may prevail, both for the preservation of the general body of society and for the protection of individual interests. As all crimes consist in the violation of some right the magnitude of the offence must depend on the nature of the right thereby violated; consequently, of crimes the greatest is that which is immediately destructive of government, and the smallest is the least possible injustice done to an individual. To this highly destructive crime different appellations have, at different times, been given. The earliest writer on the English law, has described this

crime under the term *lese majesty*, which he states to be, when a person attempts any thing against the king's life, or to raise sedition against him, or in the army, though what was designed be not carried into effect, and that all those who give aid, counsel, or consent thereto, were equally involved in the guilt. The law required an accusation of this crime to be made with all expedition, the informer was not to stay two nights, nor two days in one place, nor to attend to the most urgent business of his own: he was hardly permitted, as is mentioned in the book, to turn his head behind him, and the dissembling the charge for a time made him a sort of accomplice.

The crime, soon after, was designated by the term of high treason, and was described, by subsequent writers, according to the prevailing notions of the time: it was generally understood to consist in a breach of the faith and allegiance due to the crown; which is a notion sufficiently correct; but, the principal grievance arose from the want of a specific definition of those particular offences against allegiance which should constitute the crime of high treason. For, by a plausible kind of induction, many lawless acts of a criminal nature might, in those unenlightened times, be shown to offend against allegiance. It is therefore no wonder that piracy was understood to be classed among treasonable offences, as likewise the concealment of treasure trove. So was also an appeal to a foreign secular jurisdiction; for, this imported renouncing of the king's authority in his courts of justice. Counterfeiting the great seal, was, by some, held to be high treason, on account of the authenticity ascribed to the instrument, at a time when, from want of literature, some visible symbol was necessary to stamp a credit on public and private transactions of state; but, by others, the counterfeiting of the great seal, as well as of the king's money, was classed under a description of crime called *faussonnerie* or *falseifying*. The killing of a king's messenger was held to be treason, till at length the imputation of treason seemed to be affixed to every offence in which the king's name was mentioned. Among other extraordinary instances was the case of a person who had been sworn on the grand inquest, who, having revealed the evidence given upon an indictment for felony, was, for such disclosure, himself indicted of felony, and because he had not kept the king's counsel, according to the tenor of his oath, the offence was, by some held to be treason, but, of this the chief justice ventured to doubt. In those turbulent times it was customary for the powerful barons and other great men to redress their private grievances, and to enforce what they thought their due by their own powers, this at length came to be construed into treason under the appellation of *accroaching* the royal power; thus in the case of a knight in the neighbourhood of

London, who, with his followers, in a warlike manner, assaulted and detained another gentleman till he paid him ninety pounds and took away his horse, the knight was indicted, "for accroaching the royal power within the realm, while the king was in foreign parts, by manifest sedition against his allegiance." He was convicted and prayed his clergy, but it was refused him on account of the nature of the crime. This case happened in the 21st year of the reign of king Edward 3rd, and occasioned a petition in parliament, by the Commons, that it might be declared "in what cases they accroached the royal power;" to this petition, according to the custom of the times, an answer was given by the king, but the answer appears to be rather elusive and unsatisfactory. The grievances continued to be so oppressive, that the Commons would not be contented till some more precise and accurate declaration should be made on the subject, and accordingly they again petitioned the king in the 25th year of his reign, stating "that many persons were adjudged traitors for divers causes unknown to the Commons to be treason, and therefore requesting, that the king would by his counsel and the great and wise men of the land, declare the points of treason in that present parliament." This petition gave rise to the celebrated statute of treasons, which has stood the test of succeeding ages without being altered in a single title to this day, on account of which and for other excellent laws passed by that parliament, it obtained the appellation of the blessed parliament. Hitherto I have been stating what was formerly held to be treason. I now proceed to show what is treason at this hour; for, on this statute it is that the indictments to be laid before you will be framed.

The points or heads of treason declared by this act are seven in number.

The first is the compassing of the death of the king, queen, or prince, and declaring the same by an overt act.

The second is, the violation of the king's consort, the king's eldest daughter unmarried, or the prince's wife.

The third, the levying of war against the king in his realm.

The fourth is, the adhering to the king's enemies, giving them aid and assistance within the realm, or elsewhere.

The fifth, the counterfeiting the great or privy seal.

The sixth, the counterfeiting the king's coin, or bringing counterfeit coin into the realm.

The seventh, the killing of the chancellor, treasurer, justice of the one bench or other, justices in Eyre, justices of assize, justices of Oyer and Terminer in their places doing their offices.

In this statute it is observable, that an express exception is made, probably in reference to the case of the knight already stated to have given rise to the former petition, that if

a man shall ride armed against another with intent to kill or imprison him, it shall not be adjudged treason, but felony or trespass, as the case may be, according to the ancient usages of the realm.

The statute farther requires expressly, that the party accused of the different kinds of treason therein declared, shall be attainted upon sufficient proof of some open act, by men of his own condition. Some of the treasons thus specified do, of themselves import an open act, such as counterfeiting the seals or killing the chancellor. Others again respect the intention of the mind, such as compassing the king's death. But as, to discover the secret purposes of the heart is the attribute of Omniscience alone, as it would be highly presumptuous and dangerous in human tribunals, to take cognizance of the compassing of men's minds, without some substantial evidence of the intention. The law therefore requires that such compassing be proved by some open act. Farther, it has been determined that mere words alone, without reference to some design on foot, or unaccompanied by some act, will not amount to treason; the observation being, that words may make an heretic, but not a traitor, without an overt act. Writings also of a treasonable tendency, while they remain unpublished and unconnected with any actual project, will not make a man a traitor, how pernicious soever their theory may be, but on the other hand, as all writings import a deliberate act, and more especially when published, so they may be produced as overt acts of different kinds of treason. Thus Cardinal Pole, who, though a subject of Henry 8th, and related to him in blood, wrote and published a book in which he incited the emperor Charles 5th, at that time preparing war against the Turks, to bend his force against England, and against Henry 8th the cardinal's natural sovereign and liege; the writing of this book is stated, by lord Coke, to be a sufficient overt act within the statute of compassing the king's death, but not of the branch of adhering to the king's enemies, because at the time of publishing the work as has been justly observed by sir Matthew Hale, the emperor was at peace with the king: from which it may be inferred that, had the emperor been at that time an enemy, it might have been charged as an overt act of giving aid and assistance to the king's enemies. Moreover, where papers relating to certain determinate treasonable purpose, proved to be the handwriting of the party accused, are found in his possession, they may be given in evidence against him though unpublished. For, it is admitted by sir Michael Foster one of the most intelligent and liberal of those who have discoursed upon high treason, that, had the papers found in Mr. Sydney's* closet been plainly relative to the other treasonable practices, charged in the

* See Sydney's trial, ante, Vol. 9, p. 317.

indictment, they might have been read in evidence against him though not published. So likewise, if words are used with regard to some treasonable design, and are accompanied by an act tending to the same purpose, and proof thereof is given, the words coupled with the act will amount to treason. This has been adjudged in the case of one Crohagan, who, being at Lishon, said, I will kill the king of England if I can come at him, the indictment having set forth the words, and it being charged that he came into England for that purpose, this overt act being proved, he was convicted of high treason.

To show how religiously the words of this statute have been attended to, and fully to explain the nature of an overt act, I shall mention the most memorable case that ever occurred on this head of treason, which was that of the regicides† of Charles 1st; they were not indicted for murdering the king, but for compassing his death and his execution by warrant under their hands, was given as an overt act of such compassing.

Another head of treason is that of levying war against the king in his realm; this is either positive, or constructive. It is positive so far as it applies to any rebellious insurrection by a pretender to the throne or factious demagogue, with drums or trumpets, in martial array, either to dethrone the king, or to take him into their power, under pretence of altering the measures of government, or of removing evil counsellors. By construction of law it extends to those cases where insurgents move not immediately against the king's person, but for the purpose of carrying into execution any general and illegal design, such as to pull down all turnpikes, to destroy all meeting houses, to expel all foreigners, to reform any real or imaginary grievance of a public nature, in which the insurgents have no particular interests (for the law has provided a peaceable mode of seeking redress in these cases by petition to either branch of the legislature). But, as it was solemnly resolved in a recent case, every attempt, by intimidation or violence to obtain the repeal of a law, comes within this branch of the statute, and is treason.

Another head of treason is that of adhering to the king's enemies, and giving them aid and assistance within the realm or elsewhere. From the nature of the depositions taken on the commitment, it is probable that the indictments may have some reference to this charge. By the cases on this branch of treason it has been adjudged, that it is not necessary the aid and assistance intended should actually be carried into effect. Lord Preston* and two other gentlemen intending to join James the 2nd, after his abdication, were taken on the river Thames on their passage to France, with letters and papers to induce

Louis 14th, to promote a scheme for invading the kingdom in favour of king James. This setting off was determined to be an overt act of their intention to aid and assist the king's enemies, and although they were apprehended before any part of their traitorous design was carried into effect and before they had even quitted the realm, yet, the act of embarking with such intention being found by the jury, it was held to be a sufficient act of adhering to the king's enemies, and the parties were convicted much about the same time, when there was a war between England and France; one Vaughan obtained a commission from France and went upon a cruise against the king's subjects, he was taken near the Downs, and though no other act of hostility was proved or charged against him, yet, the act of cruising was held to be a sufficient adherence to the king's enemies and he was convicted and executed. In queen Anne's time it was discovered that one Gregg,* a clerk in the secretary of state's office, gave notice by letter to the French ministry, of the number and destination of a body of troops going on some military enterprise; his letters were intercepted, and he was thereupon indicted of high treason for compassing the queen's death and adhering to her enemies; he pleaded guilty to the charge and was executed. Another case on this branch of the statute occurred towards the latter end of the reign of his late majesty George 2nd, and was that of Florence Hensey† a physician who was indicted of high treason for compassing the king's death, and for adhering to, aiding and corresponding with the king's enemies; the overt act charged against him was the writing of letters, soliciting a foreign prince to invade the realm; now, although these letters were intercepted, and never reached their place, from which to ordinary comprehensions it might seem that his offence was not very hurtful; yet, lord Mansfield laid it down as a point most undoubted that the offence of sending intelligence to the enemy of the destinations and designs of this kingdom and government, in order to assist them in their operations against us, or in defence of themselves, is high treason.

From the principles of these adjudged cases it may therefore be concluded that, should any person being a confederate with, or employed by the king's enemies, declare an intention of coming into the province, at a given or any time, with a design of promoting an insurrection, either to surprise a king's fortress or to deliver any part of the province into the hands of the enemy, and he do actually come in with such intention, the same is unquestionably an overt act of adherence and is high treason. The same law was laid down in lord Preston's case, when he was told by lord C. J. Holt "Your lordship took

* *Ant2*, Vol. 5, p. 647.

† See his case, *ant2*, Vol. 12, p. 645.

* See his case, *ant2*, Vol. 14, p. 1094.

† See the case, *ant2*, Vol. 10; p. 3342.

boast in Middlesex in prosecution of that intention, there is an overt act in this county of Middlesex;" afterwards he was told from the bench, "you took water at Surrey stairs, and every step you made in pursuance of this journey was treason wherever it was."

Every charge of high treason is laid to be done against the allegiance due by the party. Every person, being within the king's dominions, owes him allegiance. If a subject, his allegiance is natural, if an alien it is temporary; and for that purpose every alien was formerly compellable to be sworn at the court leet. Whilst an alien friend continues peaceably in the king's dominions he is entitled, in common with the king's subjects, to the protection of the law, from which he may obtain redress for any injury to his person or property; in return for this protection he owes the duty of allegiance. There can be no doubt therefore, if an alien friend come into this province (for the words of the statute are, *within the realm or elsewhere*) with an intent to give aid and assistance to the king's enemies, it is a breach of the allegiance he owes to the king during his residence in this province. It is observable that most of the indictments for adhering to the king's enemies have been framed upon two branches of the statute, first, on that of compassing the king's death, and secondly on that of adhering. This practice is founded on an inference of law, that he, who adheres to the king's enemies, engages in and supports a warfare, by which the king's personal safety is endangered, and therefore such traitor compasses his death; when the warfare is excited in that part of the dominions where the king personally resides, in case of successful invasion by the enemy, the probability of his death is not very remote. In contemplation of law his life is always compassed by his enemies, and the statute, having no limitation of place, is to be taken generally. Whether the crown officer may choose to adopt or reject the charge of compassing the king's death is a matter of mere discretion. If former precedents are pursued, the charge cannot vitiate the indictment for the reason before assigned; if they are departed from, the charge of adhering to the king's enemies is, of itself if proved, a substantial and sufficient branch of treason.

Notwithstanding the statute of Edward 3rd had defined, with sufficient precision, the several offences that should constitute the crime of treason, yet, several additional declaratory acts were passed and new treasons were added by subsequent parliaments. Many sovereigns acquired a deserved popularity at the commencement of their reigns by procuring the repeal of some of the treasons created in the time of their predecessors. The first act of queen Mary was, to repeal all treasons, but only such as be declared and expressed, to be treasons by the statute made, as the act expresses it, "in the 25th year of the reign of the most noble king, of famous

memory, king Edward 3rd." But some of the repealed treasons, especially those respecting the coin, were soon re-enacted. In the factious struggles that prevailed during the reigns of Charles 2nd, and James 2nd, many oppressive measures took place as each party obtained the superiority. In the reign of James 2nd, it was found that the safety of the subject was too much in the power of vindictive ministers. To remedy this evil, an act was passed in the reign of king William 3rd, for the regulating of trials in cases of high treason in which many salutary provisions are made for the protection of the party accused, and many just and reasonable means of defence were directed to be admitted, which had formerly been disallowed; and it is specially enacted that no person whatsoever shall be indicted, tried, or attainted of high treason; but by and upon the oaths and testimony of two lawful witnesses, either both of them to the same overt act, or one of them to one, and another of them to another overt act of the same treason. The different kinds or heads of treason have already been mentioned, and the true construction of this clause of the statute may be explained by a case put from the bench, if an indictment for compassing the king's death, they being armed with a dagger for the purpose of killing the king, be laid as an overt act, and they being armed with a pistol for the same purpose as another overt act; it was held that the proving of one of the overt acts by one witness, and the other by a different witness was proof by two witnesses within the meaning of the statute. By an act passed in the 7th year of queen Anne, which is now in force (it being enacted that it should take effect after the death of the Pretender) farther provision is made in behalf of parties indicted for high treason, which, as they are nowise connected with the duties of the grand inquest, it were needless to mention, although they must necessarily be observed on the part of the prosecution. The comments made by the intelligent and humane author of the Discourses on High Treason, on the probable effects of this statute it is hoped will not be confirmed in this province. *Had he lived to these times, perhaps he would have reason to suspect that some of the bad ends he deprecated have already been accomplished.*

Having taken up so much of your time, gentlemen, I shall conclude my observations by remarking, that the duties of your office do at this period, involve the most serious and important considerations. Should you have reason to credit the evidence that will probably be produced, you will find that a design has been some time since on foot, which, if carried into successful execution, would subvert the government under which we live, and endanger the life, liberty, and property of all his majesty's faithful subjects in this province. These are serious consequences. But as it would ill become a court of justice to excite your feelings by a representation of projected

evils, so, I trust, it is unnecessary to recommend you to enter upon the inquiry with calmness and deliberation. Gentlemen of your education and experience, will, of course, pay little regard to idle reports, or vain surmises, should the charge be thus weakly supported; but should probable evidence be laid before you by two witnesses tending to fix the perpetration of any one of the overt acts, charged in the indictment (for due proof of any one of the overt acts will support a conviction), you will think it incumbent on you to prefer an accusation against the party that his innocence or guilt may appear by a verdict of the country.

Gentlemen, I will detain you no longer, being fully persuaded that, in the performance of your duty, you will conduct yourselves to the discharge of your own consciences and the satisfaction of the province.

The Court adjourned to Wednesday, the 14th of June.

Wednesday, the 14th of June.

The grand jury presented a bill of indictment against David Maclane, for *high treason*, which they had unanimously found a *true bill*.

On motion of Mr. Attorney General, a rule was made in the following words:

"It is ordered that the sheriff of the district of Quebec do forthwith deliver to Mr. Attorney General a list of the jury, to be returned by him for the trial of the prisoner, David Maclane, mentioning the names, professions, and places of abode, of such jurors, in order that such list may be delivered to the prisoner at the same time that the copy of the indictment is delivered to him."

The prisoner was then brought to the bar and informed by the Court that, a bill of indictment for high treason had been found against him, of which it was the duty of the attorney-general to serve him with a copy, together with lists of the jurors to be returned by the sheriff for his trial, and of the witnesses to be produced on the part of the crown. The Court added, that he was entitled to counsel, if he wished for such assistance.

The prisoner said, he did; and on his request, Mr. Pyke and Mr. Francklin were assigned by the Court to be his counsel.

Mr. Attorney General then moved, "That the prisoner be now remanded, and that he be brought to the bar of this court on Friday the thirtieth day of this instant month of June, then to be arraigned."

Which was ordered: and the Court adjourned to Friday, the 30th day of June instant.

On Saturday, the 17th of June, a copy of the indictment, a list of the jurors to be impanelled by the sheriff, and a list of the wit-

nesses to be produced by the crown for proving the indictment, were delivered to the prisoner in the manner directed by the statute, 7 Anne, c. 21, s. 11.

Friday, 30th of June.

Present—The Chief Justice, the Chief Justice of Montreal, Mr. Justice Dunn, and others his Majesty's Justices, &c.

David Maclane was arraigned upon the following indictment:

*Province of Lower Canada, } BE it remembered
District of Quebec to wit. }* that at a special session of Oyer and Terminer of our sovereign lord the king of and for the district of Quebec holden at the city of Quebec in the aforesaid district of Quebec on Monday the twelfth day of June in the thirty-seventh year of the reign of our sovereign lord George the third by the grace of God of Great Britain France and Ireland king defender of the faith and so forth Before the honourable William Osgoode chief justice of our said sovereign lord the king of his province of Lower Canada and the honourable Thomas Dunn and Pierre Amable Debonne justices of our said sovereign lord the king of his court of King's-bench of and for the said district of Quebec and others their fellow justices and commissioners of our said lord the king assigned by letters patent under his great seal of his said province of Lower Canada made to them and others and any three or more of them (of whom our said sovereign lord the king willed the aforesaid honourable William Osgoode or the honourable James Monk chief justice of our said sovereign lord the king of his court of King's-bench of and for the district of Montreal in the said province in the same letters patent named and appointed to be one) to inquire by the oath of good and lawful men of the district of Quebec in the said province of Lower Canada of all high treasons and of all misprisions of high treasons or of any of them within the said district of Quebec (as well within liberties as without) by whomsoever and in what manner soever done committed or perpetrated when how and after what manner and of all other articles and circumstances concerning the premises and every or any of them in any manner whatsoever and the said treasons and misprisions of treasons according to the laws and customs of England and of the said province of Lower Canada for this time to hear and determine by the oath of Francis Le Maistre Peter Stuart Jacques Perrault Nathaniel Taylor Louis Germain John Coffin Hyppolite Laforce comte Dupre Charles Pinguet Louis Turgeon James Frost George Allsopp Louis Duniere Jacob Dangford Augustin J. Raby Kenelm Chandler John Craigie Alexander Dumas Francois Filion John Pures Pierre Langlois and Joseph Drapeau esquires good and lawful men of the aforesaid district

of Quebec now here sworn and charged to inquire for our said sovereign lord the king for the body of the said district touching and concerning the premises in the said letters patent mentioned It is presented in manner and form as followeth that is to say

District of Quebec } THE jurors of our sovereign lord the king upon their oath present that on the first day of March in the thirty-seventh year of the reign of our sovereign lord George the third by the grace of God of Great Britain France and Ireland king defender of the faith and so forth and long before and continually from thence hitherto an open and public war was and yet is carried on between our said sovereign lord the king and the persons exercising the powers of government in France that is to say at the parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid and that David Maclane late of the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid merchant well knowing the premises but not regarding the duty of his allegiance nor having the fear of God in his heart and being moved and seduced by the instigation of the devil as a false traitor against our said sovereign lord the king wholly withdrawing his allegiance and contriving and with all his strength intending the peace and common tranquillity of this province of Lower Canada part of the dominions of our said sovereign lord the king to disquiet molest and disturb and to depose our said sovereign lord the king from the royal state title power and government of the province of Lower Canada part of the dominions of our said sovereign lord the king and to bring and put our said sovereign lord the king to death heretofore to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid maliciously and traitorously with force and arms did compass imagine and intend to depose our said sovereign lord the king from the royal state title power and government of this province of Lower Canada part of the dominions of our said sovereign lord the king and to bring and put our said sovereign lord the king to death.

And to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did with

divers other persons whose names are to the said jurors unknown conspire consult consent and agree to cause procure solicit and incite the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king to invade this province of Lower Canada part of the dominions of our said sovereign lord the king in an hostile manner and to carry on the war aforesaid against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king

And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid He the said David Maclane as such false traitor as aforesaid during the war aforesaid to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did solicit and incite the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king to invade this province of Lower Canada part of the dominions of our said sovereign lord the king in an hostile manner and to carry on the said war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king

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And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations

aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did with divers other persons whose names are to the said jurors unknown conspire consult consent and agree to raise levy and make insurrection rebellion and war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king and to aid and assist and to seduce persuade and procure divers subjects of our said sovereign lord the king to aid and assist the said persons exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid in an hostile invasion of this province of Lower Canada part of the dominions of our said sovereign lord the king and in the prosecution of the war aforesaid against our said sovereign lord the king.

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and incite divers persons not being subjects of our said sovereign lord the king to levy and make insurrection and war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king and to aid and assist the said persons so as aforesaid exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid in an hostile invasion of this province of Lower Canada part of the dominions of our said sovereign lord the king and in the prosecution of the war aforesaid against our said sovereign lord the king.

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And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid he the said David Maclane as such false traitor as aforesaid during the war aforesaid to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did consult and conspire with divers persons whose names are to the said jurors unknown arms and ammunition secretly and clandestinely to convey and bring into this province of Lower Canada so as aforesaid part of the dominions of our said sovereign lord the king with intent therewith war insurrection and rebellion against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king to levy and make and to aid and assist the said persons exercising the powers of government in France and being as aforesaid enemies of our said so-

veraign lord the king in an hostile invasion of this province of Lower Canada part of the dominions of our said sovereign lord the king and in the prosecution of the war aforesaid against our said sovereign lord the king.

And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid he the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did enquire of divers persons and did collect and obtain information and intelligence whether the subjects of our said sovereign lord the king in this province of Lower Canada part of the dominions of our said sovereign lord the king were or were not well affected to our said sovereign lord the king and his government and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in case an hostile invasion should be by them made into this province of Lower Canada part of the dominions of our said sovereign lord the king with the intent to communicate notify and reveal and to cause to be communicated notified and revealed such intelligence and information to the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king for the aid assistance direction and instruction of them the said enemies of our said sovereign lord the king in their conduct and prosecution of the said war against our said sovereign lord the king.

And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid he the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did obtain and acquire knowledge of the strength of the city of our sovereign lord the king called Montreal within this province of Lower Canada part of the dominions of our said sovereign lord the king and how the same city of Montreal might be attacked and invested and into the hand and possession of enemies and false traitors against our said sovereign lord the king be taken and seized with intent to communicate notify and reveal and to cause to be communicated notified and revealed such the aforesaid knowledge so by

him the said David Maclane obtained and acquired to the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king for the aid assistance direction and instruction of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in their conduct and prosecution of the said war against our said sovereign lord the king.

And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid he the said David Maclane as such false traitor as aforesaid during the war aforesaid to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day with force and arms at the parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid maliciously and traitorously did depart from the said parish of Notre Dame de Quebec commonly called the parish of Quebec towards foreign parts he the said David Maclane having then and there in the possession of him the said David Maclane information and intelligence whether the subjects of our said sovereign lord the king in this province of Lower Canada part of the dominions of our said sovereign lord the king were or were not well affected to our said sovereign lord the king and his government and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in case an hostile invasion should be by them made into this province of Lower Canada part of the dominions of our said sovereign lord the king and having also then and there in the possession of him the said David Maclane knowledge of the strength of the city of our sovereign lord the king called Montreal within this province of Lower Canada part of the dominions of our said sovereign lord the king and how the same city of Montreal might be attacked and invested and into the hands and possession of enemies and false traitors against our said sovereign lord the king be taken and seized with intent to communicate notify and reveal and to cause to be communicated notified and revealed such intelligence information and knowledge to the said persons exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid for the aid assistance direction and instruction of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in the conduct and prosecution of the said war against our said sovereign lord the king.

And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations

aforesaid he the said David MacLane as such false traitor as aforesaid during the war aforesaid to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day maliciously and traitorously with force and arms the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid under the false feigned and assumed name of Jacob Felt secretly and clandestinely from foreign parts did enter.

And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid he the said David MacLane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did with divers other persons whose names are to the said jurors unknown conspire consult consent and agree the walled and garrisoned city of Quebec in the county of Quebec in the district of Quebec aforesaid one of the fortresses or fortified places of our said sovereign lord the king to seize take and wrest by surprise from the hands and possession of our said sovereign lord the king to cause a miserable slaughter of and to destroy the faithful subjects of our said sovereign lord the king and the said walled and garrisoned city of Quebec into the hands and possession of the persons exercising the powers of government in France and being so as aforesaid enemies of our said sovereign lord the king to deliver for the aid and assistance of the said persons so as aforesaid exercising the powers of government in France and being so as aforesaid enemies of our said sovereign lord the king in the prosecution of the said war against our said sovereign lord the king.

And further to fulfil perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid he the said David MacLane as such false traitor as aforesaid with force and arms during the said war to wit on the tenth day of May in the thirty-seventh year aforesaid the walled and garrisoned city of Quebec in the county of Quebec in the district of Quebec aforesaid one of the fortresses or fortified places of our said sovereign lord the king maliciously and traitorously did enter with intent the said walled and garrisoned city of Quebec as aforesaid one of the fortresses or fortified places of our said sovereign lord the king to siege take and wrest by surprise from the hands and possession of our said sovereign lord the king and to cause a miserable slaughter of and to destroy the faithful subjects of our said sovereign lord the king and the said walled and garrisoned city

of Quebec into the hands and possession of the persons exercising the powers of government in France and being so as aforesaid enemies of our said sovereign lord the king to deliver for the aid and assistance of the said persons so as aforesaid exercising the powers of government in France and being so as aforesaid enemies of our said sovereign lord the king in the prosecution of the said war against our said sovereign lord the king in contempt of our said sovereign lord the king and his laws to the evil example of all others in the like case offending contrary to the duty of the allegiance of him the said David MacLane against the form of the statute in such case made and provided and against the peace of our said sovereign lord the king his crown and dignity.

And the jurors aforesaid upon their oath aforesaid do further present that on the first day of March in the thirty-seventh year aforesaid and long before and continually from thence hitherto an open and public war was and yet is prosecuted and carried on between our said sovereign lord the king and the persons exercising the powers of government in France to wit at the parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid and that the said David MacLane well knowing the premises but not regarding the duty of his allegiance nor having the fear of God in his heart and being moved and seduced by the instigation of the devil as a false traitor against our said sovereign lord George the third by the grace of God of Great Britain France and Ireland king defender of the faith and so forth and wholly withdrawing the allegiance which he the said David MacLane should and of right ought to have borne towards our said sovereign lord the king and contriving and with all his strength intending to aid and assist the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in the prosecution of the said war against our said sovereign lord the king heretofore and during the war aforesaid to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day with force and arms at the parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid maliciously and traitorously was adhering to aiding and comforting the said persons exercising the powers of government in France then being enemies of our said sovereign lord the king as aforesaid.

And in the prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David MacLane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at

the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did with divers other persons whose names are to the said jurors unknown conspire consult consent and agree to cause procure solicit and incite the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king to invade this province of Lower Canada part of the dominions of our said sovereign lord the king in an hostile manner and to carry on the war aforesaid against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did solicit and incite the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king to invade this province of Lower Canada part of the dominions of our said sovereign lord the king in an hostile manner and to carry on the said war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did with the aforesaid persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king conspire consult consent and agree to raise levy and make insurrection rebellion and war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king and to invade the said province of Lower Canada part of the dominions of our said sovereign lord the king with ships and armed men and to carry on the said war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king.

And in further prosecution performance

and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did with divers other persons whose names are to the said jurors unknown conspire consult consent and agree to raise levy and make insurrection rebellion and war against our said sovereign lord the king within this province of lower Canada part of the dominions of our said sovereign lord the king and to aid and assist and to seduce and persuade and procure divers subjects of our said sovereign lord the king to aid and assist the said persons exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid in an hostile invasion of this province of Lower Canada part of the dominions of our said sovereign lord the king and in the prosecution of the war aforesaid against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did solicit persuade move and incite divers subjects of our said sovereign lord the king to levy and make insurrection rebellion and war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king and to aid and assist the said persons so as aforesaid exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid in an hostile invasion of this province of Lower Canada part of the dominions of our said sovereign lord the king and in the prosecution of the said war against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did solicit persuade move and

incite divers persons not being subjects of our said sovereign lord the king to levy and make insurrection and war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king and to aid and assist the said persons so as aforesaid exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid in an hostile invasion of this province of Lower Canada part of the dominions of our said sovereign lord the king and in the prosecution of the war aforesaid against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did get ready raise and engage several men whose names are to the said jurors unknown to take up arms and to levy and wage war against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king and to aid and assist the said persons exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid in an hostile invasion of this province of Lower Canada part of the dominions of our said sovereign lord the king and in the prosecution of the said war against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did consult and conspire with divers persons whose names are to the said jurors unknown arms and ammunition secretly and clandestinely to convey and bring into this province of Lower Canada so as aforesaid part of the dominions of our said sovereign lord the king with intent therewith war insurrection and rebellion against our said sovereign lord the king within this province of Lower Canada part of the dominions of our said sovereign lord the king to levy and make and to aid and assist the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in an hostile invasion of this province of Lower

Canada part of the dominions of our said sovereign lord the king and in the prosecution of the war aforesaid against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did inquire of divers persons and did collect and obtain information and intelligence whether the subjects of our said sovereign lord the king in this province of Lower Canada part of the dominions of our said sovereign lord the king were or were not well affected to our said sovereign lord the king and his government and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in case an hostile invasion should be by them made into this province of Lower Canada part of the dominions of our said sovereign lord the king with intent to communicate notify and reveal and cause to be communicated notified and revealed such intelligence and information to the said persons exercising the powers of government in France and being as aforesaid enemies to our said sovereign lord the king for the aid assistance direction and instruction of them the said enemies of our said sovereign lord the king in their conduct and prosecution of the said war against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did obtain and acquire knowledge of the strength of the city of our sovereign lord the king called Montreal within this province of Lower Canada part of the dominions of our said sovereign lord the king and how the same city of Montreal might be attacked and invested and into the hands and possession of enemies and false traitors against our said sovereign lord the king be taken and seized with intent to communicate notify and reveal and to cause to be communicated notified and revealed such the aforesaid knowledge so by him the said David Maclane obtained and acquired to the said per-

sons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king for the aid assistance direction and instruction of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in their conduct and prosecution of the said war against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day with force and arms at the said parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid maliciously and traitorously did depart from the said parish of Notre Dame de Quebec commonly called the parish of Quebec towards foreign parts he the said David Maclane having then and there in the possession of him the said David Maclane information and intelligence whether the subjects of our said sovereign lord the king in this province of Lower Canada part of the dominions of our said sovereign lord the king were or were not well affected to our said sovereign lord the king and his government and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in case an hostile invasion should be by them made into this province of Lower Canada part of the dominions of our said sovereign lord the king and having also then and there in the possession of him the said David Maclane knowledge of the strength of the city of our said sovereign lord the king called Montreal within this province of Lower Canada part of the dominions of our said sovereign lord the king and how the same city of Montreal might be attacked and invested and into the hands and possession of enemies and false traitors against our said sovereign lord the king be taken and seized with intent to communicate notify and reveal and to cause to be communicated notified and revealed such intelligence information and knowledge to the said persons exercising the powers of government in France and being enemies of our said sovereign lord the king as aforesaid for the aid assistance direction and instruction of the said persons exercising the powers of government in France and being as aforesaid enemies of our said sovereign lord the king in the conduct and prosecution of the said war against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the war aforesaid to wit on the said first day of

March in the thirty-seventh year aforesaid and on divers other days as well before as after that day maliciously and traitorously with force and arms the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid under the false feigned and assumed name of Jacob Felt secretly and clandestinely from foreign parts did enter

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid during the said war to wit on the said first day of March in the thirty-seventh year aforesaid and on divers other days as well before as after that day at the aforesaid parish of Notre Dame de Quebec commonly called the parish of Quebec in the county of Quebec in the district of Quebec aforesaid with force and arms maliciously and traitorously did with divers other persons whose names are to the said jurors unknown conspire consult consent and agree the walled and garrisoned city of Quebec in the county of Quebec in the district of Quebec aforesaid one of the fortresses or fortified places of our said sovereign lord the king to seize take and wrest by surprise from the hands and possession of our said sovereign lord the king to cause a miserable slaughter of and to destroy the faithful subjects of our said sovereign lord the king and the said walled and garrisoned city of Quebec into the hands and possession of the persons exercising the powers of government in France and being so as aforesaid enemies of our said sovereign lord the king to deliver for the aid and assistance of the said persons so as aforesaid exercising the powers of government in France and being so as aforesaid enemies of our said sovereign lord the king in the prosecution of the said war against our said sovereign lord the king.

And in further prosecution performance and execution of his treason and traitorous adhering aforesaid He the said David Maclane as such false traitor as aforesaid with force and arms during the said war to wit on the tenth day of May in the thirty-seventh year aforesaid the walled and garrisoned city of Quebec in the county of Quebec in the district of Quebec aforesaid one of the fortresses or fortified places of our said sovereign lord the king maliciously and traitorously did enter with the intent the said walled and garrisoned city of Quebec as aforesaid one of the fortresses or fortified places of our said sovereign lord the king to seize take and wrest by surprise from the hands and possession of our said sovereign lord the king to cause a miserable slaughter of and to destroy the faithful subjects of our said sovereign lord the king and the said walled and garrisoned city of Quebec into the hands and possession of the persons exercising the powers of government in France and being so as aforesaid ene-

mies of our said sovereign lord the king to deliver for the aid and assistance of the said persons so as aforesaid exercising the powers of government in France and being so as aforesaid enemies of our said sovereign lord the king in the prosecution of the said war against our said sovereign lord the king in contempt of our said sovereign lord the king and his laws to the evil example of all others in the like case offending contrary to the duty of the allegiance of him the said David Maclane against the form of the statute in such case made and provided and against the peace of our said sovereign lord the king his crown and dignity.

J. SEWELL,
Attorney General of our sovereign
lord the king of and for his pro-
vince of Lower Canada.

DAVID LYND, Clerk.

To this Indictment the prisoner pleaded NOT GUILTY; and for trial, having put himself on God and the country, the following rule was made:

"It is ordered, on motion of Mr. Attorney General, that the trial of the prisoner David Maclane be on Friday the 7th day of July next, and that a precept in the nature of a *venire facias* do issue to the sheriff of the district of Quebec for summoning the petit jurors, returnable on the same seventh day of July at seven of the clock in the Morning."

To which time the Court then adjourned.

Friday, 7th July, 1797.

Present,

The Chief Justice [Osgoode]; the Chief Justice of Montreal [Monk]; Mr. Justice Dunn; Hugh Finlay, Françoise Baby, Antoine J. Duchesnay, and John Young, esqrs.

Counsel for the Crown.—Mr. Attorney General and Mr. Caron.

Counsel for the Prisoner.—Mr. Pyke, and Mr. Franklin.

The court being opened at seven o'clock precisely, and the prisoner David Maclane, set to the bar, the jurors impanelled by the sheriff were called over; eleven were challenged on the part of the crown, and twenty-four by the prisoner. The following gentlemen were sworn.

THE JURY.

John Blackwood,	John Painter,
John Crawford,	David Munro,
John Mure,	James Irvine,
John Jones,	James Orkney,
Jas. Mason Goddard,	Robert Morrogh,
Henry Cull,	George Symes.

Mr. Lynd (Clerk of the Arraigns)—David Maclane, hold up your hand. Gentlemen of

the jury; the prisoner, David Maclane, stands indicted, &c. [*Here the Clerk of the Arraigns read the Indictment*]. Upon this indictment he hath been arraigned, and upon his arraignment hath pleaded not guilty, and for his trial hath put himself upon God and the country, which country you are. Your charge is to enquire, whether he be guilty of the felony and high treason whereof he stands indicted, or not guilty. If you find him guilty, you are to enquire what goods or chattels, lands or tenements he had at the time of the felony and high treason committed, or at any time since. If you find him not guilty, you are to enquire whether he fled for it. If you find that he did fly for it, you shall enquire of his goods and chattels as if you had found him guilty. If you find him not guilty, and that he did not fly for it, say so, and no more.—Hear your evidence

Mr. Caron.—May it please your Honours, and you Gentlemen of the Jury; Having the honour to be of counsel for the crown in this case, it becomes my duty to open to you the indictment found by the grand inquest of this district against the prisoner at the bar. I certainly must regret that being a Canadian, I have to address you in a language with which I am not so conversant as with my native tongue; a circumstance which, perhaps, will not permit me to perform the duty assigned to me with that precision and propriety which the present case deserves. In this particular, I must beg leave to solicit your indulgence.

Gentlemen, the prisoner at the bar, David Maclane, stands charged with the highest crime known in our law, high treason. The first count of the indictment sets forth, that, during the present war between our sovereign lord the king, and the persons exercising the powers of government in France, he, the prisoner, withdrawing his allegiance, as a false traitor against his majesty, and intending to depose him, did traitorously compass and imagine his death.

The overt acts on this count are fourteen in number, and in substance are as follows:

1st. That he conspired with divers persons unknown to solicit the enemies of the king to invade the province.

2nd. That he did solicit the king's enemies to invade the province.

3rd. That he conspired with the king's enemies to excite a rebellion in the province, and to invade the province with ships and armed men.

4th. That he conspired with divers persons unknown, to raise a rebellion in the province, to aid and assist, and to seduce the king's subjects, to aid and assist the enemy in an hostile invasion of the province.

5th. That he solicited and incited divers of the king's subjects to levy war and rebellion against the king in his province of Lower Canada, and to aid and assist the enemy, in an hostile invasion of the same province.

6th. That he *solicited and incited* divers persons, not being subjects of his majesty, to levy war against the king in this province, and to aid and assist the enemy in an hostile invasion of the province.

7th. That he *made ready and raised* several men unknown, to levy war against the king within the province, and to assist the enemy in an hostile invasion.

8th. That he *conspired* with divers persons unknown, to convey into the province, arms, and ammunition, with intent therewith to wage war against the king, and to assist the enemy in an hostile invasion.

9th. That he *collected information*, whether the king's subjects were, or were not well affected, and whether they would or would not join the enemy in an hostile invasion of the province with intent to communicate it to the enemy.

10th. That he *acquired knowledge* of the strength of the king's city called Montreal, and how it might be attacked and taken by the enemy, with intent to communicate it to the enemy.

11th. That being possessed of the information and knowledge set forth in the two last overt acts, he *departed from the parish of Quebec towards foreign parts*, with intent to communicate it to the enemy.

12th. That he *entered the parish* of Notre Dame de Quebec, secretly and clandestinely, under the feigned and assumed name of JACOB FELT.

13th. That he *conspired* with divers persons unknown, to seize by surprise the walled and garrisoned city of Quebec, one of the king's fortresses, or fortified places; to cause a miserable slaughter of, and to destroy the king's faithful subjects, and to deliver the city into the hands of the enemy for the aid and assistance of the enemy in the present war.

14th. That he *entered the walled and garrisoned city* of Quebec, with intent to seize it by surprise, to cause a miserable slaughter of, and to destroy the king's faithful subjects, and to deliver the city into the hands of the enemy, for the aid and assistance of the enemy in the present war.

Gentlemen, there is another count, charging the prisoner with adhering to the king's enemies during the present war; and the overt acts laid are the same as those laid upon the first count.

To this indictment the prisoner hath pleaded *not guilty*; we, who are of counsel for the crown, will call our witnesses, and if they prove the charge against him, it will be your duty to find him GUILTY.

Mr. Attorney General [Sewell].—May it please your Honours, and you Gentlemen of the Jury: The duty of the office which I have the honour to hold under his majesty's government in this province, calls me at this period of the present prosecution, to support the

indictment which has just been opened by my learned friend—to support an indictment which charges the prisoner with the highest crime on which a Canadian jury can give a verdict, and which requires from you, gentlemen, who are now impanelled to try and make true deliverance between our sovereign and the unfortunate prisoner at the bar, the most serious attention; not particularly, but generally and equally, to the interests of the crown on one hand, and to those of the prisoner on the other. We are concerned for the prosecution, but we cannot wish to deprive the prisoner of any privilege to which he is entitled; we can only ask from you an impartial attention to what we shall submit to your consideration, and we are well satisfied, that the same impartial attention should be paid to whatever may be adduced in his defence. We expect at your hands a true verdict according to the evidence.

Gentlemen, the duty which you are now called upon to discharge is the most solemn of all that belong to you as members of civil society. For my own part, I feel most sensibly what the importance of the present case well merits, and what my own official situation at this moment requires from me; and I well know, that the duty which in our respective situations we are bound to fulfil is most unpleasant; yet, however unpleasant it may be, whatever may be the feelings with which its execution is accompanied, it remains our duty, and must therefore be performed. I can only wish that I may discharge mine as well as, I am confident, you will discharge yours; for, whatever your verdict may be, it will, I have the fullest conviction, be that which the justice of the case will dictate, perfectly consistent with what you owe to the prisoner and to the country.

Gentlemen, the indictment charges the prisoner with two distinct species of treason. The one, compassing the king's death, the other adhering to his enemies; and both of them are founded on a very ancient and excellent statute, the 25 Edward 3rd, chap. 2nd. This act, though one of the first upon the statute book, is, after the experience of ages, the law of treason at this hour. By the letter of the statute, "When a man doth compass "or imagine the death of our lord the king," he is guilty of high treason. It may appear at the first view, that these words restrict the crime to an intention to kill the king *personally*, but that in fact is not the case, the spirit of the statute, and the uniform interpretation which a long series of judicial decisions has given to that clause of it which I have cited, extend the description of this species of treason much beyond the limited sense of personal injury to the sovereign. The king is partly a natural, partly a political character; in the former he enjoys a natural life, in the latter a political existence; and to aim at the destruction of the one, or of the

other, constitutes the crime of high treason; for, the political or civil death, as well as the natural death of the sovereign is clearly within the purview of the statute. The reason why the statute has contemplated both, and why every court of justice, in which this point has been canvassed has uniformly adhered to this interpretation, appears to be obvious. An attempt to destroy the political existence of the sovereign, tends in fact to destroy the king in person; for, experience, and recent experience has shown, that the interval between the dethronement of princes, and their deaths is but short. But this is not the only consequence; it tends also to annihilate the constitution of government of which the sovereign is the head. Great, therefore, and abominable as all attempts against the person of the king must be, the crime of compassing his political destruction, in its consequences to society, is equally atrocious.

Gentlemen, the second count of the indictment charges the prisoner with an adherence to the king's enemies. By the statute to which I have before referred, "If a man be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere," he is guilty of high treason. With the sanction of every judicial authority which the courts of our mother country can give, this species of treason has been uniformly held to include all, who being bound by any description of allegiance to our sovereign, have given aid or assistance to his enemies in any place whatever; and by the same authority it has been repeatedly decided, that it is not necessary that such aid or assistance should actually be given, but that an intention to aid or assist the king's enemies, where the party has done what lay in his power to effect that intention, was clearly treason.

Gentlemen, treason is distinguished from other crimes by one characteristic. Generally speaking, all crimes which are known in the black catalogue of human depravity consist, according to our law, in the act of the criminal. A bare intention to commit an offence is not punishable. In the particular species of treason charged in this indictment it is otherwise; the intention is sufficient; it is in fact the crime itself, and from this peculiar circumstance arises the necessity of that part of indictments for high treason called the overt acts. In this and in similar prosecutions the object of the counsel for the crown is to establish the treasonable intention of the accused; for, that constitutes his offence. But as the human intellect can only judge of the operations of the mind by the acts of the body, they are compelled to prove the exterior conduct of the party indicted, and from thence to draw such conclusions of his intentions, as that conduct will warrant. It is also their duty to charge specifically in their indictments the several overt acts which they expect to

establish, and from which they mean to infer the guilt of the culprit. This is their duty, because the humanity of our law has commanded that it should be so, to give the prisoner an opportunity of knowing pointedly the grounds on which he is accused and to enable him to prepare his defence.

Gentlemen, the course of proceeding which I have just delineated has been followed in the present instance. Upon the first count of the indictment, to prove that the prisoner has meditated the subversion of the king's government, and consequently intended the destruction of his political existence, fourteen overt acts are laid; and the same over acts are repeated upon the second count, to prove his intention to aid and assist the king's enemies during the present war. It is upon the evidence which we shall offer, of the truth of these several overt acts, that you, gentlemen of the jury, must form your opinion, whether the prisoner is guilty or not guilty.

Gentlemen, having stated thus much to you, I proceed to submit the substance of the several overt acts here charged, to your consideration.

The first avers, that the prisoner conspired with divers persons unknown, to solicit the king's enemies to invade the province.

The second, that in pursuance of this conspiracy, he did solicit the king's enemies to invade the province.

The third, that he entered into a similar conspiracy with the republic of France, whose subjects are the king's enemies, not only to invade the province, but to excite a rebellion.

The fourth, that he conspired with divers other persons unknown to excite a rebellion in the province, to aid and assist and to seduce the king's subjects, to aid and assist the enemy in an hostile invasion of the province.

The fifth, that he incited and solicited divers of the king's subjects to join in the projected rebellion, and to assist the enemy in the projected invasion.

The sixth, that he incited and solicited divers persons, not being the king's subjects, to levy war against his majesty in this province, and to aid and assist the enemy in the projected invasion.

The seventh, that he enlisted and made ready several men, to assist in the projected rebellion and invasion.

The eighth, that he conspired with others to introduce arms and ammunition into the province.

The ninth, that he collected information whether the king's subjects in Canada were or were not well affected to his government, with intent to communicate it to the enemy for their aid and assistance.

The tenth, that he acquired knowledge of the strength of the king's city called Montreal, and of the means by which it might be invested by the enemy, with intent to communicate it to the enemy for their aid and assistance.

The eleventh; that, being possessed of the information and knowledge set forth in the ninth and tenth overt acts, he, with intent to communicate them to the enemy, departed from the parish of Quebec towards foreign parts.

The twelfth, that after leaving the parish of Quebec, he again returned to it, secretly and clandestinely, under the assumed name of JACOB FELT.

The thirteenth, that he conspired with divers persons unknown, to seize, by surprise, the walled and garrisoned city of Quebec, one of his majesty's fortresses, to cause a miserable slaughter of his faithful subjects, and to deliver the city into the hands of the enemy, for their assistance in the prosecution of the present war.

And the fourteenth avers, that on the tenth day of May last he entered the city of Quebec, with intent to seize it by surprise, to cause a miserable slaughter of the king's faithful subjects, and, in order to assist the enemy in the prosecution of the present war, to deliver the city into their hands.

Such, gentlemen, are the outlines of each particular overt act, which resolve into these general facts:—That the prisoner, in concert with the king's enemies, and others with whom we are not at war, entered into a plan for the destruction of his majesty's government in this province, by insurrection and invasion; that, to accomplish this object, he endeavoured to engage in his design many of our own subjects and many of our neighbours in the northern parts of the states of New York and Vermont; enlisted some; formed a scheme to introduce into the province the necessary arms and ammunition; and came to Montreal from the United States of America in July and November last, in order to gain intelligence respecting the strength of that city and the dispositions of the Canadians towards the king's government; that possessed of information on these points, by which the future conduct of the plan was to be governed, he went back to the United States to communicate it to the French minister at Philadelphia. That in farther prosecution of the same plan, having conceived it practicable to surprise the garrison of Quebec, he was determined to visit it; for, being on the spot, he could with more certainty adopt measures to accomplish this part of his design; that with these views, he returned into the province, and came secretly to Quebec in May last, having assumed the name of JACOB FELT, to prevent detection.

These, gentlemen, are strong facts, and it is a necessary inference to be drawn from them that the intention of the prisoner was treasonable. If he has done the utmost in his power to excite a rebellion in Canada and to assist the republic of France in an intended invasion of a part of his majesty's dominions, with a view to depose him from his government, this is clearly treason; not only compassing the death of the king, but an adhe-

rence to his enemies; and if the averments which the several overt acts contain are substantiated by evidence clear and satisfactory to your minds, treason of each description will be proved against the prisoner, and your verdict must find him guilty.

Gentlemen, I am at this moment opening to you the nature of the crime with which the prisoner is charged; I shall in a few minutes open the nature of the evidence which we shall submit to you in support of the accusation against him. Till that evidence has been heard by you, from the mouths of the witnesses which we shall produce, I ask you to suspend your judgment. It is not my wish to exaggerate the offence which is laid against the prisoner, nor is it my wish to infer, from what I am going to say, that he is guilty, because he is accused of the complicated treason charged in the indictment; till proved to be guilty, he certainly stands entitled to the full presumption of innocence; but I think myself justified in calling your attention to what must have been the situation of the province and of us its inhabitants, had the design imputed to the prisoner, succeeded but in part. If a rebellion had been raised or an invasion attempted without success, the horrors of war, a suspension of all civil rights, a daily and miserable apprehension of something yet worse to come, were nevertheless unavoidable consequences. But if the attempt had succeeded, what a scene of misery must have been opened—our properties, our lives, and, what is still more valuable than either, the happy constitution of our country, all that man can value in civil society, all that attaches us to existence, ourselves, our nearest and best connections, our government, our religion, our rational liberty, which we boast as British subjects, all must have been laid at the mercy of the French republic.—What that mercy is, the black annals of the republic can best tell; it is there indelibly recorded for the horror and execration of posterity, in the blood of their lawful sovereign, in the blood of their nobility, in the blood of their clergy, in the blood of thousands of the best and most innocent of their citizens.

Gentlemen, the prisoner is generally supposed to be a stranger to our country, a subject of the United States of America. I know not the fact, nor do I know whether any attempt will be made to prove that he is so; but be it as it may, it cannot avail him, no question can be raised whether he is a native or a foreigner. The crime laid to his charge is declared to have been committed within his majesty's dominions, at the parish of Quebec, within this province of Lower Canada; it is immaterial therefore whether, at the time the offence was committed, he was a subject or an alien; if the former, he owed to his majesty a natural and permanent allegiance; if the latter he owed an allegiance local and temporary; and if he acted contrary

to the duty of either, he is guilty of high treason. Much has heretofore been said and written on this point; but it is now (so far as we are concerned with it) most clearly settled as I have stated it. A philosopher may affect to discover a greater degree of turpitude in treason committed by a subject, who is bound to support that society and government of which he is a member, than in treason committed by an alien who has no tie of that description; but if he should, his opinion can have no weight in a court of justice; for, in the scale of legal consideration no distinction whatever can be found. In all instances where we are traitorously betrayed, what country gave birth to the traitor, is a question of very little importance; for whether he was born a subject or an alien, his treason and the injury to the public remain the same.

Gentlemen, I shall not trouble you farther with any general observations on the nature of the offence now before you, or the situation of the prisoner, but shall proceed to lay before you, the substance of the evidence by which the charges against him will be supported. Of the present war existing between his majesty and the persons exercising the powers of government in France, I shall not offer any proof, it is a fact of public notoriety; nor shall I offer any particular evidence of the different conspiracies charged in the first, third, fourth, eighth, and thirteenth overt acts. I shall rest them on the general testimony which will be given; for, the rule of evidence on this point is, that the fact of conspiring need not be directly proved, but may be collected by the jury from collateral circumstances. But to support the remaining allegations of the indictment, I shall produce seven witnesses. William Barnard, Elmer Cushing, Francis Chandonet, Thomas Butterfield, Charles Frichette, John Black, and Herman Witsius Ryland.

Gentlemen, it is uncertain at what time the prisoner first formed the idea of exciting a revolution in Canada, it was probably previous to the period from which the evidence commences; the first information, however, of which I am possessed, is dated in July last, and you will now receive it from the witness, William Barnard, whom I shall first call. He saw the prisoner at the province line, in July last, but was not acquainted with his person; it seems, however, the prisoner knew him well, for he came up to him and told him that he wished to have some private conversation with him. Barnard walked a little way with him upon the shore of the lake, and the prisoner began his conversation by informing him that he had something of importance to communicate to him, that it was a secret; that by telling it, he put his life into his hands.—I cannot but remark to you here, that whenever the prisoner has communicated his design he has expressed himself sensible of its treasonable nature, by avowing that his life was certainly forfeited

in case of discovery. You will find the same declaration repeated to several other witnesses.

Gentlemen, Barnard, not knowing the nature of his secret, advised him, if it was so dangerous, to keep it. The prisoner answered, that he had made several enquiries respecting him, and had been particularly recommended to him as a man who might be trusted. He required only a solemn promise that he would not divulge what he should tell him. This promise Barnard gave, and the prisoner then told him that he was there (upon the province line) for the purpose of bringing about a revolution in Canada. That he wished for assistance, and then pressed him to join in the enterprise; which, however, he declined and left him. He saw the prisoner a few days afterwards in Montreal, and was again solicited by him to join him, but refused. The prisoner then reminded him of his promise, and told him that if he kept his secret he should be protected. Gentlemen, Mr. Barnard is a British subject, and finding that the prisoner was seriously and systematically endeavouring to excite a revolution, he gave immediate information to a magistrate (Mr. Macord), and from that moment the eye of government, unseen by the prisoner, has constantly been fixed upon him. Mr. Macord advised Mr. Barnard to get from the prisoner whatever information he could respecting his views.—The prisoner appears to have left Montreal shortly after the last conversation with Barnard, for, he did not see him again till the month of November last; he then met him at La Prairie, near Montreal. The prisoner recognised him, pressed him again to join him, and as an inducement, told him that things were ripening fast; that Canada was already a conquered country; that a French army and fleet would be in the river early in the Spring. He asked him to sound the minds of the people, and to let him know who might be depended upon; Barnard declined. The prisoner then told him that if he would engage to let him know where the property of the seminary and of the principal merchants at Montreal was deposited, he should at all events be protected. This was the last interview which he had with Barnard; it happened, I think, on the 7th of November.

Gentlemen, the next witness whom I propose to call is, Elmer Cushing; and his testimony is important; as it goes to establish not only the prisoner's general intention, but who were his employers. You will see from his deposition, that when Mr. Barnard saw the prisoner at La Prairie, he was just returned from a second visit to Montreal. The prisoner came to the American coffee-house, kept by Mr. Cushing at Montreal, on the fifth of November last.—He went out after breakfast, and was absent between four and five hours. Upon his return, Mr. Cushing, who had known him for several years, observed, that his cloaths were covered with

small burra, and asked him where he had been; he said upon the mountain. They had a little conversation together, and upon Cushing's expressing some fears respecting the loyalty of the Canadians, the prisoner desired to speak with him in private: they went into a back room, and he then told him, as he had before told Barnard, that he had a secret to communicate which, if known, would take his life; and he required of him an oath of secrecy, which, after some conversation, was taken by Mr. Cushing. The prisoner then informed him, that he was employed by Mr. Adet the minister of the French republic at Philadelphia, to promote an intended invasion of Canada in the Spring, by a fleet, and an army of ten thousand men, to be assisted by the Canadians. He farther told him that he had something in his possession which would convince him that he was employed in the business, and produced from between the soles of an old shoe, which he took from his saddle-bags, a paper, signed "Adet," which certified that he (Mr. Adet) was interested in the family concerns of the prisoner. This, he informed him, was intentionally written in an obscure style. It could not, he said, if it were found upon him, be produced in evidence against him. Gentlemen, those who are conversant in the State Trials, will recollect many instances similar to this. A lawsuit, commerce, and family concerns have been frequently used as disguises to conceal a treasonable design.*—The prisoner told Mr. Cushing, that he was then going to Philadelphia, to communicate to Mr. Adet, the information of which he was already possessed, and should probably proceed to France, but should certainly revisit Canada in the Spring. He told him that it was proposed to attack Quebec and Montreal at the same time, and that he in person should command against the latter. He informed him that he was then returned from the mountain, which, he found, commanded the city entirely; that he had visited every part of it (certainly, gentlemen, in contemplation of that command which was promised him). The prisoner has known Mr. Cushing for several years, and he seems from this cause, to have been more explicit with him than he was with Barnard. He told him they meant to seize all property in the hands of those who should be adverse to their views, with which the expense of the expedition would be defrayed. That it was their intention, in the first instance, effectually to secure the priests and leading characters of the province, that it would indeed fare hard with all who were not favourable to their cause. He farther informed him, that he had engaged several persons in the scheme, who were resident near the Province line, who had

undertaken to enlist a certain number of men each. That the arms and ammunition for these persons, and for the Canadians who should join, would be furnished from France, through the United States of America. He warmly pressed Mr. Cushing to engage in the cause, which he declined. He asked him to give information of the state of the country from time to time, till the Spring, which he refused to do. He then told him, that the opposition which some persons were then making against the Road act was very injurious to his undertaking, and proposed that Mr. Cushing should use his influence to keep the inhabitants quiet till the Spring, promising him protection if he would. Mr. Cushing told him in answer that he could have nothing to do with him. The prisoner upon this, finding that he could not succeed in his attempt to induce him to join in the rebellion, menaced him with immediate death, if he divulged his secret. He advised him to reflect seriously on what he had said, and added that he might perhaps send some person to converse with him on the subject in the course of the Winter. That if he did send any body, he would tell Mr. Cushing that he was come to talk with him on family matters. Mr. Cushing, very soon after this conversation, gave information to government.

Gentlemen, what I have stated is the substance of what passed between Mr. Cushing and the prisoner; and you will observe that in these conversations with Barnard and Cushing you have evidence of the general design (of subverting the government by an invasion and rebellion) charged in the first, second, third and fourth overt acts; of his having solicited two of the king's subjects (for Mr. Cushing is also one of our subjects) to join in his undertaking, which is the charge in the fifth overt act; of his collecting intelligence respecting the loyalty of the king's subjects, and the strength of the city of Montreal, and leaving the province to communicate it to the enemy, which are the charges contained in the ninth, tenth, and eleventh overt acts. In the conversation with Mr. Cushing, the prisoner makes mention of arms and ammunition, to be introduced into the country, through the United States, from France. The next witness, Francis Chandonet, will detail to you the mode in which he proposed to get them into Canada clandestinely. It seems that the prisoner left La Prairie, about the seventh or eighth of November, and proceeded towards Philadelphia, to communicate the result of his inquiries and observations made in Canada, to Mr. Adet. He met Mr. Chandonet upon his way, at a place within the United States, but near to our province line. He wished, he told him, to speak with him in private. When alone, he informed Mr. Chandonet that he had a secret of the utmost importance to communicate to him, and asked a promise of secrecy, which was refused. The observation of the prisoner's answer was this, that he could not

* See the trial of the Reverend W. Jackson, *ante*, vol. 25, p. 783; and the trial of Stone, in the same volume. p. 1155, and particularly pp. 1391 and 1414.

suppose Mr. Chandonet would be accessory to the taking of his life, and that he would therefore go on; he then told him that he was employed by the French, and had been in Canada to learn, whether the inhabitants were well or ill-affected to his majesty's government. This, gentlemen, is direct proof upon the ninth overt act. He told Mr. Chandonet farther, that he wished to introduce arms and ammunition into Canada, concealed in rafts of lumber, and pressed him to carry in some in rafts of firewood from his farm at Saint Regis, upon the river Saint Lawrence, which, he said, would be supposed to be rafts coming from Upper Canada, and consequently would not be suspected. This, gentlemen, is proof as strong as any that can be adduced in support of the eighth overt act. Mr. Chandonet declined the proposal. The prisoner expressed his sorrow, and begged him not to betray him; observing, that if he (Mr. Chandonet) divulged what he had told him, he (the prisoner) must inevitably be hanged.

Gentlemen, Mr. Chandonet is an American subject; and as the prisoner solicited him to join in the projected revolution, you have in his testimony, evidence also upon the sixth overt act. But to support it still farther, and to prove the seventh overt act, I shall examine Thomas Butterfield. This evidence is an accomplice and a subject of the United States. He first saw the prisoner at Swanton, in the State of Vermont, in November last; the prisoner told him, as he had told all the other witnesses, that he had been in Canada to feel the pulse of the inhabitants, to learn if they were willing to throw off the British government. That he was employed for this purpose by Mr. Adet, the French minister, and was then returning to him at Philadelphia, to let him know the result of the intelligence he had acquired in this province. That he meant to return to Canada in the Spring to prosecute the businesses in which he was engaged, and solicited him to join in the enterprize, which he (Butterfield) engaged to do: this is direct proof of the sixth and seventh overt acts. It seems that the prisoner, at this time, entertained an idea of taking the garrison of Quebec by surprise, for he mentioned it to Butterfield.—About the middle of April last, true to his intention of returning to Canada in the Spring, he went again to Butterfield's house, seemed to be apprehensive that he was discovered, and declined coming into the province till he had seen one Charles Frichette, a Canadian. Butterfield came to Saint John's at the prisoner's request, for Frichette, and carried him to Swanton, where the prisoner conversed with him, and then determined not only to come into the province, but to proceed to Quebec. Before he left Swanton he told Butterfield that his (Butterfield's) pay should commence from November last, when he first engaged, and at parting informed him, that his intention was, to proceed to Quebec,

to see whether and in what manner the garrison might be taken by surprise.

Gentlemen, the next witness to be produced on the part of the crown is Charles Frichette, another accomplice, and a British subject. His evidence will go, generally, to support the overt acts which charge the prisoner with the design of subverting his majesty's government, and engaging his subjects to rise in rebellion; but more pointedly to the twelfth, thirteenth, and fourteenth overt acts. When he first saw the prisoner, which was in July, 1796, the prisoner endeavoured to prevail on him, to procure a certificate, signed by six or more Canadians, of this import, that they were dissatisfied with the British government, and wished to be under the French republic, which he declined. An oath of secrecy was previously required from him by the prisoner, which he took. Frichette went to Swanton in April last, in consequence of the prisoner's message by Butterfield. He saw the prisoner, who expressed his fears about entering the province, but being informed that he was not detected, he determined to come in; he did so, in company with Frichette, and proceeded to Quebec by the South Shore road; but, being apprehensive of a discovery, he assumed the name of JACOB FELT. At Saint Nicholas, the prisoner asked him, if he thought the Canadians ripe for a revolution, and after farther conversation added, that he was a general in the service of the French republic, and came to deliver the Canadians from the British government; that he had formed a design of taking the garrison of Quebec by surprise, and was then on his way for that purpose; that five hundred men, armed with pikes of wood, hardened in the fire, and headed with iron, by pursuing his idea, might effect it. On the tenth of May they crossed from Saint Nicholas to Wolf's Cove, where the prisoner concealed himself in the woods, and sent Frichette into town to bring Mr. Black, the member of the provincial parliament, to him, which he did. The prisoner had a long conversation with Mr. Black upon the means of exciting a revolution, and of taking Quebec by surprise. At the desire of the prisoner and of Mr. Black, he conducted the prisoner to Mr. Black's house in Quebec, the same evening.

Gentlemen, I must here recall your attention to the declaration of the prisoner, that he should revisit Canada in the Spring, for the purpose of carrying his design into execution. To this second visit and its general and special intention, both Butterfield and Frichette, are witnesses. Their evidence will be indisputably confirmed by that of Mr. Black. He will inform you that he went to Wolf's Cove in consequence of the message which he received by Frichette, where he found the prisoner; that he had a long conversation with him, in the course of which the prisoner entered fully into his design. He meant, he said, to excite the Canadians

to take up arms against the government, to engage at first a few men of influence, who should provide others, to be joined on a certain day to be appointed, by many already engaged in the United States of America, to the number of ten thousand, who would enter the province under various pretences. He proposed his idea of taking the garrison of Quebec by surprise, which he thought practicable; he meant, he repeated, to use pikes of eight feet in length, made of wood, hardened in the fire, and headed with iron, and added; that he did not wish to take a life, but that all who resisted must fall. He was, he said, employed by Mr. Adet, who was about to leave Philadelphia for France on the seventh of April, when he left it in order to procure the French troops who were to co-operate in the conquest of the province. When Mr. Black first saw the prisoner, he understood that his name was Felt; but afterwards, in conversation from himself, and by a letter which the prisoner gave him from a Mr. Hunsden, he found that his name was David Maclane.

Gentlemen, a much longer conversation than that which I have related, passed between Mr. Black and the prisoner, which you will receive from him; I shall only remark, that towards the conclusion Mr. Black pressed him to come to his house that evening, to which the prisoner reluctantly agreed, expressing his fears of detection. He promised, however, to come after dark. Mr. Black returned to town, and made a deposition of all that had passed, before a magistrate, in consequence of which the prisoner was apprehended at Mr. Black's house the same evening.

Gentlemen, I shall call Mr. Ryland to a single point; to substantiate the fact that the prisoner, to conceal the name of Maclane (too dangerous to be avowed), persevered in the assumed appellation of Jacob Felt, even after he was apprehended. His evidence will establish the twelfth overt act, beyond a doubt.

Gentlemen, I have endeavoured to lay before you an accurate outline of the testimony which will be given by the several witnesses, whom we shall produce. I have not, I trust, said any thing which relates to facts that will not be proved; but if I have been so unfortunate in any instance, I must request you not to pay any attention to it; what is not proved by legal evidence you must totally reject.

Gentlemen, the inference to be drawn from the several overt acts charged in the indictment, must be drawn by you upon the evidence which we offer. You are to decide whether the prisoner is guilty or innocent; whether the overt acts are supported by proof, and whether they are sufficient evidences of a treasonable intent. On this head you will permit me to remark, that no particular description of overt acts is required to support an

indictment for treason. All measures whatever, which manifest the treasonable intention are overt acts; even words, gentlemen, may be proofs of treason, especially when coupled with acts. Loose words, *not relative to any act or design*, I admit are not so; but words of advice or persuasion, and consultations for traitorous purposes, certainly are. This is a rule which our criminal writers have adopted, and among them the humane sir Michael Foster says—“*They are uttered, says he, in contemplation of some traitorous purpose, actually on foot or intended, and in prosecution of it.*” Crohagan's case is strongly to this point; he was at Lisbon, and declared he would kill the king of England. Here were words spoken in contemplation of a treasonable design, and coupled with acts. The indictment set forth his declaration at Lisbon, and that he came to England on purpose to put it in execution. The jury thought so, and Crohagan was convicted. So, in the present case, all the conversations of the prisoner are words of persuasion and advice, spoken in contemplation of a treasonable design of subverting the king's government, in prosecution of it, and coupled with acts; particularly with repeated visits to the province.

Gentlemen, I shall not trouble you farther on this point of evidence, but I must be permitted to advert to the excellent and learned charge given to the Grand Inquest, at the opening of this special commission, which clearly recognised the principle for which I contend, “that words relative to a traitorous design, actually on foot, and coupled with acts, are proofs of treason.” In the same charge it was stated, from the principles of several adjudged cases, that if any person in the employ of the king's enemies, should declare an intention of coming into the province with a design of promoting an insurrection, or to surprise one of the king's fortresses, or to deliver any part of the province into the hands of the enemy, and should afterwards actually come in with such intention, his conduct would be an overt act of adherence, and amount to the crime of High Treason. This declaration is too strongly applicable to the case before you to allow a comment on my part.

Gentlemen, it is not my province to state to you the law upon the prisoner's case; that you will receive in the progress of the trial from much higher and most certain authority. I have been necessarily led into some observations upon the law, relative to overt acts, and to what I have already said; with the permission of the Court, I will add, that as the statute of treasons contemplates the king's civil, as well as natural death, all conspiracies, all measures to depose him, and every act tending to subject his dominions to a foreign power, are overt acts of compassing his death. This is a broad base for the support of the first count in the present indictment. The foundation of the second count is equally

extensive; for every attempt whatever to aid and assist the king's enemies in the prosecution of a war against him, whether successful or otherwise, is an overt act of adherence. These are principles which I must humbly hope, the Court will sanction and confirm. Gentlemen, I trust we shall lay before you clear and full proof of all the overt acts charged in the indictment; yet permit me to remark to you what has been often ruled, that if one of them only is established by two witnesses, or two of them by one witness to each, whose testimony you believe, the evidence will be sufficient. The prisoner will not then be entitled to the resumption of innocence. The crime of high treason will stand *proved* against him, and your verdict, on the oath you have taken, according to the duty you owe to God, to your sovereign, your country and yourselves must be, that he is *GUILTY* in manner and form as he stands indicted.

EVIDENCE FOR THE CROWN.

Mr. William Barnard sworn.—Examined by Mr. Attorney General.

Do you know the prisoner?—I do.

How long have you known him?—Since July 1796.

Where did you first see him?—In the state of Vermont, but near the Province Line.

Had you any conversation with him?—I had a good deal.

Mr. Attorney General.—Pray give an account of it?

Mr. Pyke.—If your honours will permit us, we object to this evidence; the overt acts are all laid to have been committed in the parish of Quebec, and they offer evidence of conversation which passed in Vermont.

Mr. Attorney General.—This objection was taken in Layer's case, and it was there said in answer to it,—"We are entitled to give evidence of overt acts of the same species of treason wherever committed, provided we also prove one in the county laid in the indictment; which we must do, otherwise what we now prove, will pass for nothing."—I offer this as an answer to the objection now taken, because it was held to be sufficient in the case I now cite.

Chief Justice.—It certainly is a sufficient answer. Whatever overt acts you prove, committed out of the county of Quebec, cannot avail you, if you do not prove an overt act within that county. Go on.

Mr. Attorney General.—Give an account of what passed between you and the prisoner in July last, at the Province Line.

Witness.—On my arrival at the house where the prisoner was, near the Province Line, it was nearly dark; he told me he wished to have some conversation with me. I stepped aside with him, as he desired not to

speak in the presence of other persons: we walked down to the shore of the lake. The prisoner then addressed himself to me, saying, he had something of great importance to communicate, in the doing of which he should put his life into my hands: I desired him not to do it. He told me that I might perhaps think it singular that a stranger should address himself to me in that way; but that was not so much the case as I might imagine; for, although he was a stranger to me, yet I was not so to him; he then mentioned some circumstances that happened to me before I came into this province to reside, by which I knew that he had taken some pains to find me out.

Proceed?—He told me that I had been recommended to him as a person to whom he might entrust a secret: he desired that I would not divulge it; which I promised, if it should be nothing against me. He then told me that his business there was, to bring about a revolution in Canada, and that the Canadians would have every thing done for them for that purpose.

Did any thing farther pass between you?—Yes. He went on and said, that he wanted some person to take the lead in the business, to carry it into execution; and if I would undertake it, my fortune should be made.

At what time was this?—It was in the evening, on or about the 29th July 1796.

Go on, if you please?—I then asked him who had recommended him to me, which he refused to tell. I told him it could be no friend of mine, for no friend would do it; that it was a plot of some enemy of mine to ruin me: that he was mistaken in his man, and I turned away from him. He then desired that I would not say any thing about it.

Did he say any thing about Montreal?—He said he should be at Montreal in a few days, and perhaps I might think better of it.

Did you afterwards see him at Montreal?—I did; I saw him in Montreal, about four or five days afterwards; he accosted me in the street, and asked me if I had thought any farther on what he had said to me at the Lines; I told him I had not thought much about it. He said that, when I came to know who he was, I should think differently; that if I would not take an active part, yet if I would conceal the matter I should be protected. Of these conversations I immediately informed Mr. Maccord, one of the magistrates at Montreal.

Did you see the prisoner at any time afterwards?—Yes, Sir. I was at La Prairie, a village about three leagues above Montreal, on the opposite side of the river, about the seventh of November last, where I saw the prisoner again. I had seen him a few days before at Montreal, but had no conversation with him.

Had you any farther conversation at La Prairie with the prisoner?—I had. He said I must then think differently of the business

* See vol. 16, p. 164.

from what I had done before; I replied that it was true there had been some disturbances that looked something like what he had talked about. He said those disturbances were very much against their cause; that he had been at Montreal, where he learnt that suspicions were entertained against him; he said I must have occasioned them; for, I was the only person to whom he had spoken on the subject.

What answer did you make?—I told him, that after I had seen him at the Lines, I had mentioned the matter to Mr. Maccord, but had not mentioned his name; he said he was very sorry for it, and that I must be more cautious in future.

Did he tell you any thing farther?—He told me that I might depend on it this was a conquered country: that there would be an army here in the Spring, and if he could depend upon me, he would tell me something farther. That he wished me to take an active part in the business. I told him I should not take an active part, nor should I make any other promises than I had done.

Did he say any thing about the Seminary of Montreal?—He said I could make inquiries where the seminary kept their money; and that he likewise wished to be informed who the principal merchants were, and in what part of their houses they kept their cash; that, if I would do so, I should be protected; that he wished me to sound the people's minds, and learn who would be likely to oppose them, and that I should use my influence to keep the Canadians quiet during the Winter, so that there might be no disturbances.

Did he tell you when the proposed attack would be made?—Not particularly, but he said, the blow would be struck at once in the Spring, at a time when it would not be expected; that they (the prisoner's party) should wish to confine all those that would be against them; but did not wish to take any person's life.

What other conversation passed between you?—None, sir; the prisoner appeared to be a little dubious of me, which, I suppose, prevented him from explaining himself farther.

Mr. William Barnard cross-examined by Mr. Pyke.

Did you receive any promise or reward from government when you gave your information?—None.

Chief Justice.—That question has been allowed; but I think it was an improper one.

Mr. Pyke.—When you were at La Prairie, did you not offer to conduct the prisoner out of the province?—No.

Did you not follow the prisoner from Montreal to La Prairie?—No, I was there first.

Did you not go there for the purpose of meeting the prisoner?—I had other business but that made a part, in order to get farther information, by desire of Mr. Maccord.

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Do you know the prisoner to be a subject of the United States?—I do not know any farther than that he said he was.

One of the Jury.—I beg the witness may be asked by what name he first knew the prisoner.

Witness.—I did not know the prisoner's name first; I afterwards found it was Mac-lane.

Elmer Cushing sworn.—Examined by Mr. Attorney General.

Are you a British or an American subject?—I am a subject of this government.

How long have you known the prisoner?—I have known him about ten or eleven years.

Do you recollect to have seen the prisoner last Autumn, and where?—He came to my house, the American coffee-house, a tavern, which I then kept, at Montreal, on the fifth of November last, in the morning, before breakfast; I was absent when he came: on my return home, which was about ten o'clock, one of the witnesses here present informed me, that he had taken his breakfast and was gone out: he returned about three or four o'clock.

Were you struck with any thing about his cloaths when he returned?—Yes, sir; I observed that his cloaths were covered with small burrs, and asked him where he had been to get so many upon him; he answered that he had been upon the mountain of Montreal. I remarked to him that he had been a long time gone; he answered, that he had been on every part of the mountain, and he thought it commanded the greatest prospect he ever saw, and might be made a place of great command over Montreal, in case of a war.

Mr. Attorney General.—I do not wish to interrupt you, go on, if you please.

Witness.—The conversation then turned upon the then situation of this country; in the course of which, I observed to him, that the Canadians had made considerable disturbances, and seemed to be disaffected. Immediately upon that, he told me he wished to have a little private conversation with me: we retired into a back room, where he informed me that he had a secret which he wished to impart to me; that it was a matter of the utmost consequence, and that he could not communicate it unless I would swear never to reveal it.

What was your answer?—I told him that I considered my word always sufficient to keep a secret, without an oath; he said he could not reveal it upon my bare word, and I replied that I did not wish to know it.

What reason did he assign for requiring an oath of secrecy?—He said he could not communicate it without my swearing, because he was putting his life into my hands.

Proceed?—I told him that my concealing the secret might be detrimental to me, in which case I could not conceal it: he replied

he would endeavour to make it advantageous to me, as he should have it in his power; I then told him that I would conceal it in case it should not prove detrimental to me in person or property; that I would, at any rate, conceal his name; and I made accordingly a solemn promise to that effect.

What passed after your promise of secrecy?—He informed me that there would be a severe attack upon this province, early in the Spring, which would at once overthrow the present existing government; that he had been employed in forwarding the plan, ever since he had been in and about this country, and was so employed still; that the attack would be made by a fleet from France, which would bring from ten to fifteen thousand land forces.

There was I believe, at that time, a French fleet upon the coast?—It was so reported.

Did he speak of that French fleet?—He did; he observed that the fleet then upon the coast, was part of the fleet destined for the purpose; but that the season was too late.

Did the prisoner show you any papers?—He informed me that he was employed by the French minister at Philadelphia, and that he had something with him that would convince me that he was not acting without authority. He went to his saddle-bags, took out a pair of shoes, one of which had a hole worn through the outside sole near the toe, and pulled a paper out from between the two soles, which was signed "Adet." The paper was written in the English language, in an obscure style, purporting that he (Adet) was interested in the family concerns of David Maclean.

Had you any conversation upon this paper?—I asked him why the paper was written in such an obscure style; to which he answered that it was a dangerous piece of business to go upon; that if he should have the misfortune to be apprehended, and the paper should be found upon him, it could not be produced in evidence against him.

What farther passed respecting this paper?—He said the paper was drafted by himself; and that Mr. Adet would have signed any other, but he (the prisoner) thought this the safest way in which he could write it: there was no occasion for a regular commission, he said, until matters came to the test.

If I understand you right the prisoner came to your house, as a traveller. Did he tell you where he came from?—He informed me that he was then immediately from the French minister at Philadelphia, and should immediately return thither, where he should receive his orders, and then sail for France; that he should return to Montreal in the Spring, by the way of New York, in order to take the command in that quarter.

Had you any discourse about the intended attack?—I asked him in what manner the attack was to be made; he answered that the attack was to be made at Quebec and Mont-

real at one and the same time; that the first object would be to secure the money and valuable property, for defraying the expenses of the war, and then effectually to secure all the priests and leading characters in the province; that those who were favourable to the cause would be protected in person and property, but as to those who were adverse to it, it would fare hard with them. He said he should have a number of persons under him at Quebec, at the time of the attack, whom he meant to get into the province on rafts, or in any other way that he could, that they would be there for the purpose of exciting discontent and mutinies within the garrison, and for spiking the cannon, if possible, at the time of the attack.

What did he say respecting the Canadians?—He said he did not expect to need the assistance of the Canadians before the first blow was struck.

Who did you understand was to command against Montreal?—The prisoner told me that he himself was to command against Montreal.

Had you any conversation respecting arms and ammunition?—We had; he told me that arms and ammunition were to be furnished from France through the United States, by the French minister Adet, for the attack at Montreal.

Did you understand that any persons were already engaged in the business?—I did, several: the prisoner told me that he had many people near the Lines in the States, who had already engaged to furnish him with a number of men each, who were to come in and assist in the attack against Montreal, he said that I might be assured this was a conquered country; that the French were determined to have it either by conquest or treaty.

Did he appear solicitous to engage you to assist him in any way?—Very much so; he first desired me to take an active part in the business, promising that if I would, I should have any reward I might ask, or any standing in the service I might choose to accept of. I told him that I could not make him any promises of that kind, for I should have nothing to do with it, he then said that if I would give every information I could, respecting the state of the country, I should be protected in person and property. I still told him that I should not make him any promises, nor have any thing to do with it, either one way or another. He then said to me, "You can certainly do thus much,—you can endeavour to keep the Canadians quiet till the Spring; for these disturbances on account of the road act, are very detrimental to the cause: I have," says he, "at this time a number engaged for that purpose."

What disturbances?—There were disturbances at that time in Montreal, respecting the execution of the road act. Several persons were violently opposed to it. The prisoner, I conceive, alluded to them.

Go on if you please?—He then told me that he had gone as far with me as he could go, until I should promise to join and take an active part, but if I engaged to take an active part, he had other matters of great importance to relate to me.

Did the prisoner remind you of your oath of secrecy?—He did, and said that if I ever revealed what he had communicated, it should fare hard with me, that any life would be taken immediately.

What did the prisoner say to you as you left the room, where the conversation which you have related took place?—He observed that I might alter my mind, perhaps, and that he might during the winter, send some person to converse with me; that if any one should come, and tell me he came to talk with me on family matters, that would be the man, and I might then depend upon not being deceived.

Elmer Cushing cross-examined by Mr. Pyke.

Did not you come to Quebec in November last, to give information against the prisoner?—I gave information respecting a plot against government; but I did not mention the prisoner's name.

Did you not obtain a promise of a township of land as a reward?—I have a promise of a township, but not as a reward for any information which I ever gave against the prisoner.

Is it not on account of that promise that you now come to give your evidence?—No, it is not: I have been served with a subpoena, and I should have come if I had not obtained a promise of a township.

Is the prisoner a British or an American subject?—When I first knew him, about eleven years ago, he resided at Providence in Rhode Island. He is generally reputed an American subject.

Francis Chandonet sworn.—Examined by Mr. Attorney General.

Are you a British subject?—No, sir; I am a subject of the United States.

Do you know the prisoner at the bar?—Yes, I do.

Inform the Court and jury how you first became acquainted with him?—I saw the prisoner the first time at Watson's tavern last summer, a little below the Isle Aux Noix; and some time in the beginning of the winter I saw him again; he came across the Lake to a place about three quarters of a league above the Lines, within the United States; he met me on the bank of the Lake, and asked me if my name was not Chandonet, I answered, yes. He asked me to take a little walk with him, for that he had something to communicate to me in private, which I consented to.

What did he tell you in the course of your walk?—He told me that he was there upon business of the utmost importance, and that I had been recommended to him as a proper

person to assist him, if I would take a part in it; but before he could relate the matter to me, I must engage not to divulge it.

Did you make him any promise of secrecy?—No, sir, I told him I could not make such a promise till I knew what the matter was; he said the business was of a political nature, and that he could not relate it until I had promised, which I again refused to do.

What followed?—After a short pause, he said, he supposed I would not be accessory in taking away a man's life, and that he would therefore go on with the conversation: he then told me that he was employed by the French to go into Canada to sound the minds of the people, and to see how they were affected to the present government; which business he had already begun, and had found a large body of the Canadians could be raised to make an insurrection in the country; that he had learnt I was going to live on the river St. Lawrence, at a village called St. Regis, within the state of New York, and a few leagues above Montreal, which, he thought would be a very suitable place to have such a person as me, if I would assist him to carry on a plan.

Did he tell you what plan?—He did; he told me that this plan was, to secrete a quantity of arms and ammunition on rafts of wood in the spring of the year, to be brought into the province both by lake Champlain and the river St. Lawrence; that he thought a quantity might likewise be concealed in the rafts of firewood that are made in the Chateauguay river; and that these would be the safest, in as much as it would be supposed they were coming from Upper Canada.

Do you recollect any conversation respecting the prisoner's brother?—I do. The prisoner told me, that he had a brother who was coming to the Lines with a large quantity of dry goods: that these dry goods were for the purpose of collecting a store of provisions to be ready when the insurrection in Canada should take place, and that it would furnish a good excuse for him to be backwards and forwards, as he could visit his brother's store without being suspected.

Did he ask you to join him?—He pushed very hard upon me to take part with him.

Did you agree to take a part?—I refused; and declined having any thing to do with him. He told me he was sorry I would not.

Did he desire you to be secret?—Yes, sir, he did; and added, that if I divulged what he had told me, he must inevitably be hanged. He left me immediately after.

Francis Chandonet cross-examined by Mr. Franklin.

How long have you known the prisoner?—About eleven months. I did not at first know his name.

Do you know him to be a subject of the United States?—I do not know whether he is or is not.

Are you not a Canadian by birth?—Yes.

Why then do you call yourself an American subject?—I left the province with the Americans in the year 1776, having the promise of a commission in the army; I was afterwards naturalized in the United States.

Did you not come into the province last winter, and were you not sent out by a proclamation from the governor on suspicion of being a person disaffected to government?—I was sent out of the province as being an alien.

When did you first give information against the prisoner?—Last winter.

Did not the expectation of being permitted to return into the province, in order to go to your farm in Upper Canada, induce you to give information against him?—No; being conscious of my innocence, I wrote a letter from the Lines to Mr. Richardson, the magistrate, at Montreal, telling him that it was my intention to go to Upper Canada, and that I was ready to take my trial upon any charge that might be brought against me; some time after I came again into the province, and was then subpoenaed to give evidence against the prisoner.

Thomas Butterfield, sworn.

Mr. Pyke.—The attorney general, in his opening, has stated that this witness is an accomplice. We must object to his examination.

Mr. Attorney General.—He certainly is an accomplice, but he is still a good witness. I must again refer to Laver's trial. In that case, Lynch and Plunkett, both accomplices, were examined as witnesses for the crown. Every day's experience shows that accomplices may be heard. The objection can only go to the credit of the present witness, not to his competency.

Chief Justice.—There can be no doubt on this point. Where previous testimony has been given, the evidence of an accomplice can certainly be received.

Mr. Attorney General.—You are I believe a subject of the United States?—Witness.—I am a subject of the United States.

Do you recollect having seen the prisoner last fall, and where?—The prisoner came to Swanton in Vermont about the middle of November last, and put up at a tavern near my house; he desired me to take a walk with him, which I did; he told me he had a matter which he wished to communicate, if I would not reveal it: it would be of advantage to me.

What did he afterwards tell you?—He informed me that he had been in Canada, in order to sound the minds of the Canadians, and to learn whether they were willing to rise and take the government out of the hands of the British; that he had been in Canada before in the course of last Summer, and had been in Philadelphia on the same business.

Did he tell you by whom he was employed?

—He did, he told me he was employed by the French minister or agent, "Adet."

Did he tell you where he had been?—Yes; he said he had been in Montreal, and found that the people were disposed to lend a hand in a revolution and were willing to seize the government of the country, if they had any body to lead them; and that he was then returning to Mr. Adet with this information.

Relate any other particulars of the conversation which you remember?—I asked him if he had found any men that could be depended on, who were willing to join him: he answered yes, one Black or Blake, and that there was a number of others whom he had seen and conversed with; he particularly mentioned one Barnard (whom I did not know), who he supposed would be willing to join him; he told me that he was then going to Philadelphia, to Mr. Adet, to make his returns of what he had done in the province. I asked him if he had any letters to Mr. Adet; he said he had one, which I understood to be from Mr. Black or Blake, but I did not see it.

Were you ever present at any examination of papers?—No, sir, I was never present at any examination of papers.

Had you any further conversation at this time?—We had some conversation with regard to the taking of Quebec: the prisoner seemed to think, if that could be done, the country might soon be overcome, and he proposed bringing in a number of men from the states, on rafts.

Did the prisoner say he meant to return to Canada?—He told me that he expected to be back again some time in April or the beginning of May following.

The prisoner I believe solicited you to join him?—Yes, he did.

Did you undertake to assist him?—I did certainly engage to assist him in the undertaking.

When did you next see the prisoner?—About the 20th of April last; he returned to Swanton and came to the tavern close to my house.

Had you any discourse at this time?—Yes, sir.

Relate it?—He gave me a wink to step aside, and asked if I had been in Canada during the winter: I answered I had not; he asked me what news from there, whether I had heard of any discoveries respecting him: I told him I had not; he said he had heard on the road that he had been discovered: I told him I knew nothing about it.

Did he converse with any other person?—Yes, with Mr. Holgate for about half an hour out of doors, and the next morning he asked me to assist him with a boat, and two hands to go to the Isle La Motte, and I procured the hands for him.

Were you sent in search of any person by the prisoner?—About the 26th of April, the prisoner desired me to go to St. John's in

Canada, to bring one Frichette to him. I asked him if Frichette would come: he answered yes, he knows me. I accordingly went to St. John's, and did my errand to Frichette, and brought him to Swanton. The prisoner and Frichette went out together and had a conversation: after which he told me he had determined to go into Canada with Frichette.

Did the prisoner give you any money for your journey to St. John's?—Yes, a few dollars.

What did he tell you concerning that money?—He told me that the money he had given me was not for pay, but for my expenses; that my pay would begin from the time he first engaged with me, by which I understood he meant November last.

When he left you, did he say to what place he meant to go?—He told me that he and Frichette were going to Quebec to view the place.

For what purpose?—He said he meant to lay some plan to take the garrison; but what plan he could not say till he had seen it.

Did you make any inquiry respecting the prisoner's papers?—Yes, sir; I asked him where they were, he said he had left them with his brother, who was then at Mr. Scovill's; he told me also that Scovill had married a sister of his, and had moved to Swanton in February last, in order to afford a home for him and his friends.

Thomas Butterfield cross-examined by Mr. *Franchlin*.

How long have you known the prisoner?—The first time I saw him was a twelve month ago last April.

Is the prisoner a subject of the United States?—I do not know, but I understood him to be so: he told me he was born in Boston.

Were not you apprehended in May last on suspicion of treason?—I was taken up at St. John's in May last, for aiding and assisting this Mr. MacLane, and I am now in custody.

Chief Justice.—You said that your pay was to commence from the time you engaged, had you any specific sum promised you?

Witness.—No, sir; I had no specific sum promised me.

Charles Frichette sworn.—Examined by Mr. *Attorney General*.

[The witness observed that he was unable to express himself in the English language, whereupon he was allowed to give his evidence in French, and Mr. James Tanswell was sworn as interpreter.]

When did you first become acquainted with the prisoner?—I first saw the prisoner in the month of June, 1796.

By what name did you then know him?—He then went by the name of David MacLane.

Where did you first see him?—He came to my house at Saint John's, and asked me if I

knew one Frichette; to which I answered, "I am the person." He asked me if I had horses to sell; I answered, "Yes." We went into the field, and he asked me if I could keep a secret and was an honest man; I told him not to trust me too much. He said he had a secret to tell me; but that he could not communicate it without my taking an oath of secrecy.

Did you take the oath?—Yes, I took the oath.

What conversation passed afterwards?—He asked me if I would go to Philadelphia or to France, I asked him for what purpose; he answered, "to see the French minister." I said no, it was too far; he said if I would go with him, he would give me a good reward; I replied it was impossible. He then asked me if I could procure a certificate from five or six Canadians, to show that there were more people who wished for a change of government than were contented with the present government; I said it was impossible: he replied, the certificate could do no harm. He bade me not be afraid, that he was an officer in the French army; he asked repeatedly for the certificate, but I did not procure it.

When did you next see the prisoner?—About the latter end of April last Butterfield came for me, and conducted me to him. He was then near the Falls of Missiskoui river; he gave me a good reception; we took a walk together.

What passed between you at this time?—He asked me whether there was any news in Canada; I told him, "No;" he asked me if I had revealed what had passed between us last Autumn; I told him I had not. He then asked me if I thought he might safely go thither; I said, "Yes;" he proposed that we should go together; I asked to what part; he answered he did not exactly know, but perhaps he might go to Quebec. He asked me if I would conduct him; to which I agreed.

You came in, did you not?—Yes, we passed behind the fort of Saint John's before daylight, and proceeded on the South Shore road to Saint Nicholas. On the journey the prisoner observed, the country wanted English farmers for its improvement.

What passed at St. Nicholas?—At Saint Nicholas he asked me why the prisoners, then in gaol at Quebec, were confined; and if I thought the Canadians were disposed to revolt; I said no, they were not very warlike, nor desirous of a war; but he did not tell me that he came to make a revolt, he laughed when he spoke about a revolt. He asked me if I knew one Black, a member of the provincial parliament; I said "No." He afterwards told me that he was come to take Quebec, I said "if I thought so, I would go back." He said he did not intend to hurt any body: that if he had five hundred men with pikes of wood six or seven feet long, hardened in the fire, he could take the town. He de-

sired me to ask my brother respecting the people at Quebec, why they were in gaol. I did so, he told me for making disturbances about the road act.

Proceed with your story?—We left St. Nicholas, and crossed the river St. Lawrence above Wolfe's Cove, where we landed. The prisoner sent me to town to bring Mr. Black to him, which I accordingly did. When Mr. Black arrived, the prisoner desired him to excuse the liberty he had taken in sending for him, and said he was afraid of coming into town himself, for fear of being suspected.

At what time was this?—This was about two o'clock in the afternoon.

Now go on?—Mr. Black then told the prisoner, that I had informed him of the intention of his journey; Mr. Black said he did not think it could succeed, that he had attempted the same business without success, and he therefore advised the prisoner to go off without making the attempt; he said the Canadians were not sufficiently disposed to rise; and were little to be depended on, that one went one way, and another another way, and that they were not worth doing any thing for. The prisoner said that he should go away.

Continue your narrative?—He informed Mr. Black he had a letter for him, and said he had another letter for another person. Mr. Black opened and read both letters, and then advised the prisoner to tear them to pieces; Mr. Black tore one and the prisoner the other. I advised them to bury the letters, which was done. The prisoner then told Black that he would go away as soon as the tide served, and begged him to keep the secret; for, that, if he revealed it, he would do him a great injury. He said that Mr. Marston, one of the constables at Montreal had been offered five hundred dollars to take him the year before; Mr. Black told him he was an honest man, and that he need not be afraid.

Was any thing said about taking Quebec?—Yes, there was.

What was it?—Mr. Black asked the prisoner what plan he had for taking the town: the prisoner answered that it was very easy to take it; that if he had five hundred men, he would take it very easily: that each man might be armed with a pike about six or seven feet long, pointed with iron and hardened in the fire; and if the town-gates were open, one company might come in at one gate and another at another gate, and strike at the same time. The troops, he said, would be so surprised, that they would not know which way to turn; he thought there would not be a person killed on either side. I heard no more.

What was the reason?—I fell asleep.

Did you hear any thing afterwards?—When I awoke I heard the prisoner say to Mr. Black that something might be given to the troops to set them asleep. Mr. Black said that would do very well, that the greater part of the troops were volunteers and desired nothing better than to lay down their arms

that the most of them had enlisted, thereby to get bread.

Was any thing said about coming to Quebec?—Mr. Black desired the prisoner not to be ashamed nor afraid, but to come to his house, dress himself like a gentleman and take a walk about the town.

Did the prisoner accept this invitation?—He expressed a dislike to come into town; but Mr. Black told him not to be afraid; and he at length consented to come. Mr. Black did not approve of his coming in company with him, because he said, he himself was watched, and their being together might create suspicion; and he desired me to bring him to his house in the evening, which I accordingly did.

You have said that you first knew the prisoner by the name of Macdane. By what name did you call him on the journey from Saint John's to Quebec?—The prisoner desired me to call him Felt and I called him by that name from Saint John's till we went to Mr. Black's.

John Black, esq. sworn.—Examined by Mr. Attorney General.

Pray, sir, do you recollect having seen the last witness (Frichette) on or about the tenth of May last, and where?—Charles Frichette called on me on the tenth of May last, about twelve or one o'clock at my own house in Quebec.

Did he offer any thing for sale?—At first he asked me if I would buy some oak timber of him, and we accordingly bargained for oak timber; but afterwards he desired to speak with me in private: I went with him into another room, where he took me by the hand and said "you will be surprised when I tell you that I have no oak timber to sell. I am come upon business of a quite different nature;" then squeezing me by the hand he said, are you the Mr. Black that was in gaol in the year 1794: I told him I was: "you have been much injured," said he, "but your injuries are now almost at an end, the French and Americans have taken up your cause, and you will soon triumph over all your enemies." I wished to know why he came to me; I told him I had already been caught by insidious men: then squeezing both my hands he asked "are you really to be depended upon?" I told him I was to be depended on: "then," says he "there is a French general within a quarter of a league from this place who wishes to have a conversation with you respecting the taking of the garrison of Quebec." I asked by what means? Has he an army? He answered "No, he has no army, he wishes to concert measures with you, and you must come immediately with me to see him."

Did you comply with his request?—I thought it was prudent to comply with it, and I proposed to go in a calash; but Frichette did not approve of it; I therefore set off in company with him on foot.

To what place did he conduct you?—We crossed the plains of Abraham, went down by Welfe's cove, and up Mr. Mabane's hill. When we came to the side of the wood, Frichette asked me to go into the wood with him, which I at first declined, not knowing how many people might be there. Frichette went in; he came out again shortly after, and I saw him beckon to me; I then went about two hundred yards into the woods, where I found the prisoner in a very long beard.

Had you any conversation with him?—He shook hands with me, and expressed himself glad to see me, begged pardon for sending for me, but added that he wished to see me on a matter of great importance. I think it proper to mention here, that I never saw the prisoner, till I then saw him in the wood; nor had I ever heard of or knew there was such a man in existence. I think it also necessary to add that I was uncertain in regard to my situation when thus in the wood, and that I therefore agreed to every measure the prisoner proposed.

I wish you to relate to the Court and jury the particulars of the conversation which passed between you?—The prisoner said, his man had told him that he had explained to me a part of his plan, "my plan," said the prisoner, "is that of humanity. I am sorry to see a great people labouring under the tyranny of England: I propose to push the British government from the continent of America." I asked him by what means: he answered, with eight or ten men of influence, such as I might be, one might raise, under plausible pretences, as many people as possible: who at a certain appointed time would be joined by a number of men, who were following him in from the states under various pretexts of seeking labour, &c.; that he would arm them with pikes of eight feet in length, headed with iron, and hardened in the fire, which he considered to be eighteen inches longer than the British musket and bayonet; that laudanum, he thought, might be given to the troops with effect; that the attack must be sudden, they would rush in, but not take a life if possible to avoid it; he hoped none would be taken; but at the same time, said he, for the sake of posterity all who resist must fall.

What farther?—He observed to me that we must take care not to injure the works; for that would render us vulnerable after we were masters of the garrison. He said, he left Mr. Adet on the seventh of April, who was going to France on the tenth, that both he and the Spanish minister were concerned in the measure; he added these words: "Adet is the man of business, the Spaniard is a fop."

Did he observe any thing farther to you?—He said, that measures were so concerted with Mr. Adet, that if we could but possess ourselves of the garrison by surprise, it could never be recovered from us; for, said he, besides the measures taken by the French and Spanish ministers, I have fifteen thousand

men at the Lines ready at a nod, with part of which I mean to garrison this place and with the remainder perhaps form an expedition against Halifax. You may think me young, said he, for such an enterprise; but this is the system France pursues at present; she will not employ an old general. Previous to my seeing the prisoner, and until the latter part of our conversation, I understood his name to be FELT; but he then gave me two letters, the one directed to John Blackwood, esq. and the other directed to myself, recommending the prisoner as a gentleman highly worthy of notice, by the name of *Colonel David Mac Lane*.

What did you do with these letters after he delivered them to you?—After reading the letters I tore them and buried them; but after the prisoner was arrested I took them up again, and have them now in my pocket.

[Here the witness delivered the two letters to the clerk.]

The prisoner told you Mr. Adet was gone to Europe? did he say for what purpose?—He told me that Mr. Adet was gone to Europe, for the purpose of bringing a force to co-operate with the fifteen thousand men that were to be brought in from the states.

Did he make any inquiries respecting Quebec?—He inquired much concerning the property, public and private, that there was in Quebec. I told him I thought there might be from three to five hundred thousand pounds I knew not how much more. He said the property was intended to be given those who should take the city: he also told me that he had been in the province in October last; that the government boasted of having quelled the tumults at Montreal: but that it was in reality he that had done it.

Did you recommend to him to come into the garrison?—Yes, I advised him to come to town after dark; he expressed his fears of being discovered, and said that government had offered five hundred dollars for his person. He however at length consented, and gave me his pocket book (in which his name was written) to prevent detection in case he was taken.

[Here the witness produced the pocket book.]

Did the prisoner come into town with you?—No, I left him to be conducted by Frichette to my house when night came on. As soon as I came into town I gave information to a magistrate (Mr. Young), and the prisoner was apprehended the same evening, about eleven o'clock at my house.

John Black, esq.—cross-examined by Mr. Pyke.

By whom were the letters signed?—By Mr. Hunsden.

Is Hunsden a friend to the British government?—I cannot tell, but I believe so; I con-

sider him to be a good man, and a friend to good order.

What were the letters about?—They were about business, timber, staves, and lumber in general.

Did not the prisoner tell you that he came into the province to purchase horses?—No, he told me that the reduction of the fortress of Quebec was the object of his journey; that he had bought a horse Yamaska, but that this was for a mask.

Herman Witsius Ryland, esq. secretary to his excellency the governor general, sworn—
Examined by *Mr. Attorney General*.

I must trouble you, Sir, to relate the circumstances relative to the prisoner's name, which took place when he was apprehended?—Between eleven and twelve o'clock at night, on the tenth of May, I received a deposition made by the last witness, containing in substance the evidence which he has just given; from which I learnt that MacLane was in Quebec. I communicated it immediately to the governor, and, by his order, went with a small party of soldiers to apprehend him; I found him in bed at Mr. Black's house in the suburbs. I awoke him, and asked him what his name was; he said it was Felt: I told him I understood it was MacLane; he again asserted that his name was Felt, and that I was mistaken. It was too late to carry him before a magistrate: he was conducted immediately to the main guard. I there enquired what monies he had with him: a bag was produced, containing one hundred and forty dollars, the greater part in quarter dollars: I wished to give him a receipt for it; and asked him in what name I should give the receipt: he answered, *Jacob Felt*; I gave him a receipt for monies found on *Jacob Felt, alias David MacLane*.

Mr. Attorney General.—I have no farther questions.

Herman Witsius Ryland, esq. cross-examined by *Mr. Pyke*.

What was his conduct when apprehended?—Perfectly decent and collected, not like a man conscious of any crime.

Mr. Attorney General.—We have several other witnesses who are now present in court; but as the case is already fully established, we shall rest it upon the testimony which the jury have already heard. The evidence on the part of the crown is closed.

Mr. Pyke.—The prisoner desires to be heard personally in his defence, and hopes the Court will allow both him and his counsel to speak. He wishes to speak first.

Chief Justice.—The Court will most readily allow the prisoner, in his present unfortunate situation, every thing which he can reasonably ask. It is not usual for the prisoner to speak before his counsel; but we will hear both him and you in the order you may think proper to adopt.

THE PRISONER'S DEFENCE.

May it please your Honours; I feel much satisfied, that I am permitted to speak before you on this solemn occasion. I am indeed very sensible that a black cloud hangs over my head; that every thing looks very dark against me; but I think and trust, if my conduct be looked into, it will be dispelled into gentle showers. I feel gratitude that I have been indulged in every thing reasonable. I thank the Court for its indulgence to me. Gentlemen of the jury, the day is at last arrived which we have looked for, on which you are to decide my fate. Your faces are all strange to me; but if I can read in your faces your hearts, surely I have nothing to fear.—To you Mr. Sheriff and to you Gaoler, in whose custody I have been since the tenth day of May last, I make my public acknowledgments, and thank you for the kind treatment I have received. To you—[Here the prisoner turned towards the audience and seemed prepared to address them.]

Chief Justice.—Prisoner; The Court will be happy to hear every thing you can say in your defence, but it must be addressed to them.

Prisoner.—I beg pardon if I have done wrong. I will continue my defence.—I am confident I can explain what now appears against me, but in accounting to you for my conduct in this province, it is necessary that I should give you a little narrative of my life, previous to my coming here; for it is in some measure bound up with the views I had in this country; and I shall sometimes be obliged to go back a little from one thing to another; but I hope I shall not tire your patience, nor do what is improper. I am not a man used to address in this way; if I should go astray, the Court will put me to rights.—It is true to say, my life has been a day of sorrow. I was unfortunate in trade, which is what brought me first to this country: I had a Store at Providence, in Rhode island, where I lived in credit for some years: I had a brother-in-law named Jacob Felt. We failed in trade: we had losses; we were unsuccessful. I found we must positively fail, and I communicated this to my brother. He said, many people had been at the Store, who had been in Canada, who said much money might be made there: this was in the fall ninety-five. When I found my presses come so hard against me, that it was certain I could not stand against them, I advised my brother to take goods from the Store, and go to Canada with them to see what could be done there, hoping, if they turned to account, to be able to satisfy some of my creditors. After he was gone, I was involved worse and worse: I prepared myself to go somewhere, seeing that my creditors would come upon me.

I had desired my brother to meet me on Greigg's, near the Lines, I went there and found my brother had left some goods there.

I, soon after this, came into Canada to St. John's. Before this, I had been about Lake Champlain, loitering away the time till I was to meet my brother. I was two or three days with Squire Butterfield, and talked with him about canals and roads, and such like. I went from St. John's to Montreal, and put up at Mr. Cushing's, where I met with one Mr. Moore, who was come upon a speculation of buying lands or cutting canals: we had some conversation together, and he desired me not to interfere with him in his speculations. Finding there was nothing to be done in this way, I returned to Greigg's, where I saw Mr. Barnard: I asked him a number of questions of a mercantile nature, about the province, because I meant to come and settle in it, and endeavour to get a living in it. I asked about the situation of the Canadians; because, if there was likely to be disturbances, it might not be prudent to think of settling here, and I must turn my views to something else.

After I was in Canada the first time, I saw several Americans: they asked me if I had been about the province, and if I had been upon the mountain of Montreal, I said no: they advised me, if I returned, to visit it, as well worthy of curiosity. When I returned to Montreal to look after some work; for, I would willingly have worked, though I was never much used to it; having nothing to do, I thought it would be a good time to visit the mountain; I did so, and when I came back, I told Mr. Cushing where I had been: he said you should not mention that: I asked, why so; he said, because you are much suspected here: I asked why I was suspected, I could give good proof of who I was. I went to my saddle bags, and took out from it my pocket book to get for that purpose, the paper which he has mentioned. In crossing the Lake, my pocket-book had fallen into the water, and got damaged on one side: I put it into my saddle-bags, where there was an old pair of shoes worn out at the toes, the paper had slipped between the soles.

I must now go back a little, in my narrative to show you how I came by this paper. My wife was related to a family of the name of Belshire, at Newport, in Rhode island. There was a brother and two sisters, their father was concerned in the Guinea trade, and was killed by the negroes on the coast of Africa; the brother followed the sea; he died three or four years ago, and left some property in France, which his sisters could never get by reason of the troubles. As I found it was not likely I could do any better, I thought to go to France, to try to get this property, and bring out goods for it, which would yield me a commission: for this purpose I went to the French minister at Philadelphia, to get a certificate; he was not there, but I saw his clerk, whose name I do not well remember; he gave me a paper certifying, that the French minister interested himself in my family con-

cerns. I did not then go to France, but came to Canada. Here finding there had been some disturbances, and that I was suspected, I determined to go back to New York, and from thence to France. When I came to New York, I found that the French, as the English had done before, took all our vessels they could lay hold of, not only those bound to an enemy's port, but also those bound to their own ports. Now again I was once more disappointed, and knew not which way to turn. I looked again towards Canada; for I was fearful of my creditors in the States, and hoped something yet would turn up. When I returned again to the Lake, I had found that I could buy timber on credit, and I meant to bring some here to change for horses to take out of the province, which I thought would turn to a double advantage. I met Squire Butterfield, and asked him if he knew any body that would take me into Canada; he answered yes, he knew one Frichette. I said I knew him, and he went to fetch Frichette to me. I knew my creditors followed me; and that it would be very easy for them to find me out, and therefore, as I did not wish to be taken, I resolved to go by another name; for this reason, I told Frichette that my name was Jacob Felt, and he accordingly called me always by that name. I made an agreement with Frichette to carry me down to Quebec, or perhaps a little below; and to show me the places where I could purchase the best horses, which he promised me to do. We set out in the night with a ferryman of South River, and he landed us between Watson's point and the fort of Saint John's, a little before day-break. We were landed about a quarter of a mile from the Fort. I did not know that it was necessary that I should give in my name at any place, and I shunned St. John's, that my creditors might not have a clue to find me. I was so apprehensive of them, that I asked Mr. Black, when I came there, if there was any body from the States that knew me. When we came to Mr. Frichette's, we staid a day in his house, and then he and I set out for Quebec. The first day we breakfasted with a brother of Mr. Frichette, a priest at Bellisle. We then came to Sorel; I saw no horses that I liked, till I came to Saint Francois, where I bought one. We continued our journey after this, till we came to Saint Nicholas, where three of Mr. Frichette's brothers live. When we came there, he wanted to stop a little time. He said some Canadians had been put in prison: I asked on what account: he said on account of the Road bill. I asked if he did not think they would rise again, and endeavour to rescue their companions out of prison: he said he believed not, they were not very warlike; but he did not know; and he talked to me about arming them with pikes in case any thing should happen. I came over to Wolfe's Cove, and sent Frichette to bring Mr. Black; for I was prevented from

coming into Quebec, by fear of my creditors, or of some persons knowing me, who might give information where I was. I remained in the place where I was put on shore, till Mr. Frichette came back, and brought Mr. Black with him. I had some conversation with Mr. Black: he said he should like to purchase some timber, but did not choose to buy before he had seen it. I had asked one captain Hunsden in Vermont to give me letters to Canada, to some body that could give me any business to do: he gave me letters to Mr. Blackwood, and Mr. Black, stating, that I had timber to dispose of, and mentioning me by my name "David Maclane." Mr. Black knew Mr. Hunsden, and when I gave him the letter, he asked me to come to his house at Quebec. I said I was afraid of my creditors, and asked him if there were any strangers in Quebec, lately arrived from the States. He said no, and pressed me very hard to come, but recommended me to keep the name of Jacob Felt, which I had taken; and as the letters to Mr. Blackwood and himself, he said, mentioned my real name, he advised me to tear them to pieces, which we did. I consented afterwards to come to his house; but as my creditors were strangers to Mr. Black, and might be in Quebec without his knowledge, I determined not to go in, till after dark. Mr. Black staid a little longer with me, and we conversed upon indifferent subjects, among the rest about Quebec, the strength of the place, and whether it could be taken or not. He left me shortly after. I got to his house about half after eight, and was taken into custody about eleven o'clock the same night.

Gentlemen of the Jury, I think I have made every thing very clear; no doubts can remain in your minds; my story is a very plain one, and you must see, from the narrative which I have given, that I am an innocent man. The witnesses who have appeared against me, may all be honest men, for aught I know; I have nothing in particular to object against them. But all are liable to mistake; and it is now evident how much they have been mistaken. They have grossly mistaken my views, which were only views of trade, and not at all political. I rely upon your integrity and humanity, but I put my trust in a much greater power. I put trust in you, oh God! Do thou pour into the hearts of judges wisdom and knowledge; strengthen their inclination to do justice, and impress on the minds of them, and on the minds of this jury, who are now to decide upon my cause, the innocence of thy servant; and, oh God! touch the lips of these, thy young servants, who are to speak in my behalf: give them eloquence and persuasive arguments: grant that their endeavours may be successful, and that I may live to serve and glorify thee hereafter.

Mr. Pyke.—Gentlemen of the Jury; The arduous and important task of conducting

the prisoner's defence has been assigned by the Court to my learned friend Mr. Franklin and myself. Important this cause must be acknowledged in every point of view; but particularly as it regards the prisoner: to him the consequences will be serious indeed, should you by your verdict find him guilty of the crime of which he now stands charged; and arduous I must declare my task to be, when I consider my own want of experience; I could therefore wish the prisoner's counsel possessed of more abilities than I can presume to. Nevertheless, I confess, I feel a degree of confidence when I reflect that I am before an English tribunal, which is at all times ready to extend its indulgence to those unfortunate persons, who are brought before it, accused of capital crimes; and that the Court has been, and still is, considered, in some measure, by the laws of England, as counsel for the prisoner. On those accounts, I do not doubt but that I shall receive the countenance and assistance of the Bench, as well as your indulgence (gentlemen of the jury) in my endeavour to discharge the duty assigned me. And here I beg leave to express my satisfaction to find that the prisoner's fate is in the hands of men of your respectability and character, as it insures to him a just verdict, knowing and well persuaded, as I am, that you are incapable of being governed by those prejudices which influence only weak and unenlightened minds, and that those false reports, which have been circulated against the prisoner, tending to render odious the character of a man already too unfortunate, will not with you have the smallest weight. I am well persuaded also that, however appearances may be against the prisoner, nevertheless you will require positive and indisputable evidence of the charges brought against him; that evidence which the law, in cases of high treason, requires, amounting to the clearest demonstration, and not mere words, and vague conversations, so liable to be misinterpreted by those who hear them; for, gentlemen, when the smallest doubt can be entertained in your minds of the guilt of the prisoner, it is your bounden duty to lean to the side of mercy and acquit him; Were the prisoner before one of those bloody tribunals lately erected in that republic which has so long disturbed the peace of Europe, he and his counsel would have strong grounds of apprehension; but here they can have none, as they know and are satisfied that he stands before a pure and uncorrupt tribunal, an English tribunal, where justice is mingled with mercy, and where accusation and suspicion alone are not sufficient grounds for conviction.

Gentlemen, the prisoner at the bar, as has been stated to you on the part of the prosecution, stands charged in the indictment with two distinct species of treason; the first, for compassing and intending to depose the king, and put him to death; and the second for ad-

hering to, aiding, and comforting the king's enemies, contrary to his allegiance. The able manner, in which my learned friend, the attorney-general, has explained to you, gentlemen, the nature of the crime of high treason, and its different species, makes it unnecessary for me to expatiate thereon; but, I must beg leave to differ from my learned friend in his application of it to the present case. Let us therefore examine, how far the crime, of which the prisoner stands charged, has been proved against him. Now, in order to support the first charge in the indictment, it was necessary, on the part of the prosecution, to prove the intention of which the prisoner is there accused, viz. the compassing and imagining the king's death. Has this been done?—I contend it has not, nor is there a shadow of proof of any intention on the part of the prisoner to depose and take away the life of our beloved sovereign; indeed it is absurd to suppose that he had any such idea, and it is equally absurd to suppose the act of any individual in this distant part of his majesty's dominions, could in the smallest degree affect the sacred person of his majesty; nor indeed could it possibly have that tendency, should it even extend so far as to effect the separation of Canada from the dominion of the crown of Great Britain. Therefore, gentlemen, no such intention, as that stated in the first charge of the indictment, being proved against the prisoner, you must be of opinion, that this charge stands unsupported: I will therefore urge no more on this head, but will now consider how far the evidence goes to support the second charge in the indictment, namely, "that the prisoner was adhering to, aiding, and comforting the king's enemies." Now, to support this charge, it was necessary on the part of the prosecution to prove, that the prisoner had actually given aid and information to our enemies: but of this no proof appears; in lieu thereof, an endeavour has been made to prove an intention, on the part of the prisoner to do so; but the law requires more, for the intention of giving aid is not sufficient to support this charge against the prisoner, and in this it differs very materially from the first charge. The intention must be carried into effect, at least so far as it regards the person accused, and on this account, although the information sent never was actually received, as in the case of intercepted letters, the crime however is considered as complete on the part of him who wrote and sent them; but this has not even been proved against the prisoner: indeed no other evidence has been offered to you but of certain conversations, which took place at different times, between the prisoner and the witnesses. The whole of which, as to any design of overthrowing the government of this province, or of aiding the king's enemies, appears to me to be altogether improbable: indeed we find from one part of Frichette's testimony, that he did not believe

the prisoner had any such design; for, on their journey down to Quebec, Frichette says, he put the question to him, when the prisoner, smiled and answered, that he intended no harm to the country. The prisoner, as he has informed you, and which has been proved by several of the witnesses, is an alien, a native and subject of the United States of America, where he has hitherto always resided, and for a long time was engaged in trade; but being unfortunate in his business, he became a bankrupt, and was in consequence much harassed and persecuted by his creditors, who threatened him with imprisonment, and at length, to avoid this, he was obliged to quit his house and family to seek an asylum in this country. His creditors even pursued him from the States here: of this he received information, and on that account found it necessary to take upon himself the feigned name of JACOB FELT, in order to elude their pursuit. Having arrived in this country, his first object was, to settle himself in some kind of business, and, previous thereto, it was very natural and necessary for him to make some enquiries into the state of the province, as well as to inform himself of the general disposition of its inhabitants. And what were those enquiries? was there not a time when every citizen of Quebec made the same? All ranks and descriptions of people here endeavoured to obtain information of the disposition and sentiments of the Canadians in the distant parishes. Thank God, those enquiries are no longer necessary; however I humbly conceive that they were not more criminal in Mr. Maclane than in any other person. It must be acknowledged that the conduct of the prisoner has been in some measure imprudent, but it surely has not been such as to justify you, gentlemen, in convicting him of the crime of which he is now accused; you must therefore acquit the prisoner on this charge also: and now I trust and hope, that whatever may have turned up favourable to the prisoner in the course of this trial, and may be passed over unobserved by his counsel, will be supplied by the superior discernment of the Court, I therefore, gentlemen, leave the prisoner in your hands, not doubting but that you will do him justice, and by your verdict, at once acquit the several duties which you owe to the laws of the country, the prisoner, and yourselves.

Mr. *Francklin*.—May it please your Honours, and you Gentlemen of the Jury; I believe it is not necessary for me to make any apology for appearing here in defence of the unfortunate man at the bar; as the Court has assigned me that duty, which I shall endeavour to perform to the best of my ability.—Gentlemen, the prisoner has given you a narrative of occurrences, previous to his coming into this province; he has unfolded to you his real designs, and I think his conduct must now appear to you in a light, very different from that in which the counsel for the prose-

cution have endeavoured to place it. It is to be regretted, that proof cannot be offered to you of many circumstances which the prisoner has mentioned, because they are only known to persons resident in another country; but, gentlemen, I trust, it is sufficiently evident to you, that his views were entirely of a private nature, and by no means hostile to the government of this province. Every man, engaged in mercantile pursuits, is liable to misfortune; this was the prisoner's lot; he was a merchant in Rhode Island, but met with considerable losses, which obliged him to quit that state, and seek for a country where he might shelter himself from his creditors, who were very pressing, and endeavour to repair his broken fortunes. This quarter of the world seemed to offer a field for his exertions: new roads and canals were much wanted for the advancement of agriculture and commerce, and he flattered himself with the prospect of exerting his talents usefully in this line of business. He was, however, somewhat alarmed by various reports, which he had heard of discontent and uneasiness among the Canadians; it was thought in the American States that this country would shortly be involved in political troubles, which he, very naturally, apprehended, might defeat his plan and render his situation very precarious. It became therefore a matter of importance to obtain correct and certain information on this head, and this will account for the minuteness of his questions respecting the state of the province and the disposition of the inhabitants towards the government; but, such being his motive, there was nothing criminal in his enquiries, nor can he now be charged with acquiring intelligence, with intent to communicate it to the king's enemies. It has been observed by my learned friend, who is concerned with me in this defence, that suspicion or doubtful proofs are not sufficient to convict in cases of high treason. I heartily concur with him, and in his opinion, that neither the first nor the second count of the indictment has been sufficiently substantiated. In support of the first count, it appears to me necessary, to adduce evidence of some direct plan or intention to take away the king's life, as in the case of Crohagan, who formed such a design at Lisbon, in a foreign country; for the present is a constructive compassing, and it must strike you as monstrous to suppose, that the subversion of the government of this province would endanger his majesty's natural life, when even a revolution, which severed thirteen colonies from the British empire did not in the least affect his sacred person. In England the case is different; it is there usual to charge persons, concerned in plots against the government, with compassing the king's death, and the reason assigned by Mr. Justice Foster is, that experience has shown that between the dethronement and the grave of princes, the distance is very small. The same

reasoning will not apply here, and you must therefore acquit the prisoner on this count. As to the second count, which charges the prisoner with adhering to the king's enemies, he has frankly acknowledged, that he did ask questions, but with views very different from those attributed to him; and, I trust, you are convinced of the truth of his assertion. It is your duty to scrutinize most strictly the evidence given against him, particularly as it partly comes from persons charged as accomplices, who, with their own mouths, proclaim their own bad character, and who, being implicated themselves, endeavour to shift the burthen of guilt from their own heads, and ensure the conviction of the person under trial, in order to save themselves from punishment.

Gentlemen, Barnard has not told you, that the prisoner once mentioned the French republic, or the French minister at Philadelphia; and I cannot help remarking a seeming inconsistency in the evidence of this witness, who, though he told the prisoner at their second meeting, that he had given information to Mr. Maccord, a magistrate, of their first conversation at La Prairie, was yet entrusted with more of his secrets. One would suppose that this piece of intelligence would have alarmed the prisoner, and made him distrust the witness; but according to the later's account, it did not in the least.

Butterfield's testimony is much relied on, but his manner of giving his evidence, the indifference and unconcern he showed in a case which affects the life of a fellow creature, could not fail to strike you, and shock the sensibility of every feeling person who heard him; he is entitled to little attention from you, and you can give still less credit to so prevaricating a witness as Frichete: in my humble opinion, you ought to disregard his evidence entirely, as that of a person wholly unworthy of belief. Gentlemen as the crime of high treason is of a heinous kind, so is the punishment annexed to the commission of it severe indeed. It behoves you then to construe every thing most favourably for the prisoner, and not to condemn him, but upon the fullest and most satisfactory proofs. He is a subject of a neighbouring country, and a fair opportunity now offers to exhibit to them an instance of the liberality and impartiality of our juries. The prisoner with gratitude acknowledges the indulgence shown by the Court, and is very sensible of the candour with which the prosecution against him has been conducted.

Gentlemen, it does not occur to me, that any farther observations are necessary. I will only remind you how scrupulously juries in England have in modern times weighed the proof in trials of the present nature, particularly in the late state prosecutions. I intrust the prisoner's state to you with confidence: gentlemen of your eminent integrity and discernment will doubtless consider his case with-

out bias or prejudice, and I feel assured that by acquitting him, you will satisfy your consciences, and discharge your duty to the country.

REPLY.

Mr. Attorney General.—Gentlemen of the Jury;—Notwithstanding the lateness of the hour, I must yet request your attention for a short time. It is my duty to reply to what has fallen from the prisoner and his counsel in his defence, and to offer to your consideration what that defence suggests to me. I am particularly bound not to neglect whatever tends to prove the guilt of the accused.

Gentlemen, in the present instance no part of the evidence on the part of the crown stands controverted by the prisoner; on the contrary, he has admitted the different meetings with Barnard, Cushing, Butterfield, Frichette, and Black, and even the substance of the conversations which passed between them. Some times he vindicates, at others he explains his enquiries: he tells a story in itself unsatisfactory, which, weak and trifling as it is, is at the first blush evidently nothing; for, not a single witness has been called to support it. The object of the defence is, to induce you to believe that his views in Canada were mercantile, not traitorous; but in this he is not consistent; one moment his visit to Canada is to establish himself in trade, another merely to avoid his creditors. If we admit the latter to be the object, why did he so often leave Canada, when, so long as he remained in the province, he was free from arrests? Must we suppose that he left it to meet his creditors, and insure a prison? Again, admitting the former to be the object, what could have induced him, when he made the inquiries which the different witnesses have stated, to have taken them apart, into bye-walks and private rooms? Would he have informed them that he had a secret of the utmost importance to communicate? That he put his life into their hands? Or would he have exacted oaths of secrecy? Is it customary to require an oath of secrecy when a merchant asks a question upon trade? Are commercial inquiries so dangerous that, if known, the lives of the persons venturing to make them are in danger? No, gentlemen, this conduct speaks loudly; it demonstrates that he was conscious of the guilt in which he was involved and well knew its consequences. To proceed farther, is it a mercantile transaction to tell Barnard, Cushing, Chandonet, Butterfield, Frichette, and Black, that his object was, to excite a revolution in Canada: to plan the introduction of arms and ammunition clandestinely; to solicit several to engage in a projected invasion and rebellion: to enlist others and to meditate and consult on the means of delivering the province into the hands of the French republic: to enter it under an assumed name; to plan the reduction of the strongest fortress in the country by treachery;—are these the

characteristics of commercial concerns? Do these inquiries resemble the inquiries of a merchant? He says they were questions on the state of trade, questions which a man in business would naturally ask, who had a design of settling in the province: can we believe it when we reflect on their general import, or when we recollect questions to this effect—are the people well affected to the government—will they join with me—with the French republic—and will they rise in rebellion against their lawful sovereign? These are his general questions, while he avows himself, at the same time, to be in the service of France, our mortal foe; that he is on his way from Canada to the minister of the French republic, at Philadelphia, to acquaint him with what he then knew, with the result of his researches. Gentlemen, these are prominent features of that inconsistency which marks the defence. In other particulars it is equally evident. The visit to the mountain of Montreal bears no affinity to trade; it is examined by him not in a commercial but in a military point of view, and in this view he observes upon it to Cushing. The proposal to distribute laudanum amongst the king's troops, the intended use of pikes,—not to be opposed to the musket or bayonet, but appropriated, I fear, for the more dreadful purpose of assassination,—the organization of the numbers he proposed to engage under ten men of influence, cannot be considered as mercantile transactions, nor can they for a moment be supposed to have relation to peaceable concerns of any description. Gentlemen, if the inquiries were in fact merely commercial, yet, the peculiar conduct of the prisoner, when he puts them, is such as would induce the strongest suspicion of guilt. On that I have already remarked; I have only to add that the inquiries themselves far from being commercial, are as strong evidences of guilt, as the black and mysterious conduct with which they were accompanied; both united, convince and take from the mind every shadow of doubt.

The prisoner, aware that the paper he produced to Cushing must bear hard against him, has attempted, by an improbable story, to explain it: it is extraordinary that he does not even recollect the name of the clerk by whom, he says, it was signed, while the witness Cushing, pointedly swears, that it was signed, "Adet." But he is not singular in this instance; the whole of his defence is contradicted by the evidence for the crown, and stands totally unsupported by any evidence in its favour. He attempts to account for frequent visits to Philadelphia; from whence is this solicitude? why is an attempt made to account for visits not charged against him? The reason is obvious. Philadelphia is the residence of the French minister; and the connexion between the visits to that city and the journeys to Canada is too striking to escape notice: he saw that unfavorable infor-

rences might be drawn and he has endeavoured to give them a colour which they will not take. He has also attempted to account for his various visits to Canada; but this was not necessary, he is not accused for having visited Canada once or oftener; his intention to overthrow the government of the country, to which he came under the appearance of an innocent stranger, is the crime of which he stands accused.

Gentlemen, the prisoner unfortunately for himself, has wished to speak in his own defence, and has admitted points which his counsel would not have allowed; he has strengthened the evidence of the crown, by what he has advanced in justification of his conduct; for, as I have observed, he has admitted nearly the substance of the evidence against him. I shall point this out in some particulars.—He admits his visits last summer to Canada and his return this spring, under the assumed name of Felt; the several meetings with Barnard, Cushing, Butterfield, Chandonet, Frichette, and Black;—the conversation with Chandonet respecting the political state of the country, with Cushing respecting the certificate from Mr. Adet; with Butterfield, respecting the sending for Frichette, with Frichette, respecting an expected revolt of the Canadians and arming them with pikes in case of a revolution, and with Black respecting the capture of Quebec. These admissions are made with many others. In short, gentlemen, knowing the truth of what has been submitted to you, he cannot controvert it; he admits all, except those parts of the evidence which amount to direct proof of treason; and these his personal safety forbids him to acknowledge: they must, however, be answered, and he opposes to them an explanatory defence, unconnected, improbable, and totally unsupported by evidence, while he states at the same moment that he has nothing to object against the credibility of the witnesses produced on the part of the crown.

Gentlemen, what his counsel have said is but little; but I know not in such a case, how that little has been collected. It is however my duty to pay as much attention to their arguments, as to those of the prisoner in person. I perfectly agree with them that the case is most important, and requires the most serious consideration. I, as readily, admit that their task is most arduous; they are called upon, by their professional duty, to weave a defence without materials. In the prosecution of that duty they have first endeavoured to prove that the prisoner is a foreigner. If any advantage is to be derived from this fact, they must receive it from the Court, not from you. Whether the prisoner stands exonerated by law from the guilt of treason because he is an alien, is clearly a point of law. He is an alien, they say, and therefore candour and liberality ought to distinguish the trial: the observation is just, they certainly ought; but though they use the

words candour and liberality, they recommend to you partiality: but this is a recommendation to which they could not expect your attention. Incline as favourably to the prisoner as his case will allow, but remember that you cannot acquit a foreigner on evidence that would convict a native.—They have said that there is no proof of his intention to kill the king personally. I beg to be understood, I have never advanced such an absurdity; I refer to what I said at the opening of the evidence, it is the political, not the natural death, of the sovereign at which the prisoner has aimed. They have also said that there is no proof of his having aided or assisted the enemies of the king: the cases of Francis Henry de la Motte, Florence Hensey, William Gregg, and Thomas Vaughan, which have been cited, are directly in point; no actual aid in either of these cases was given: their intention to give assistance was held sufficient to make their treason complete. They have also said that some of the witnesses are persons that have been accused as accomplices with the prisoner in his treason. It is true, I have brought forward, on the part of the crown, two witnesses who stand accused of the crime charged against the prisoner, and from their own mouths you have heard that they were engaged by him for the express purpose of overthrowing the established system of our government with a view to subject us to the power and dominion of the French republic. But notwithstanding this, they are sufficient witnesses in law. In the case of Laver, to which in the course of this trial I have often referred, Lynch and Plunkett, both accomplices, were heard, and Laver was convicted. A verdict may be given on the oath of a single witness, but the oath of an accomplice, corroborated by the testimony of one unsuspected witness has been always held sufficient. In this case it remains with you, gentlemen, to affix that degree of belief to the testimony of the accomplices, which in your consciences, you think proper. I will however remark, that the evidence of Butterfield and Frichette, is by no means weak: they do not stand alone, they are supported by the united testimonies of Barnard, Cushing, Chandonet and Black. As to Frichette particularly, permit me to observe, that you must have seen with what reluctance he deposed against the prisoner; this is surely the strongest proof that he ought to be believed in all he has sworn against him.—Gentlemen, I have heard with regret the conduct of the jurors in the cases of Thomas Hardy and others lately decided in London, held up as examples for your imitation. I will not venture my own opinion upon the conduct of those juries, but will appeal to the opinion of the justly celebrated Mr. Burke, who, in a late publication, has observed with an eye to these trials, “that public prosecutions are become but little better than schools for treason, of no use but to improve the dex-

terity of criminals in the mystery of evasion, or to show with what impunity men may conspire against the government and constitution of their country."

Gentlemen, I must yet detain you a moment; remark that the evidence on the part of the crown is complete. The original treasonable design of the prisoner against the king's government is established by the united testimony of Bernard, Cushing, Chandonet, Butterfield, and Frichette, five witnesses whose depositions coincide in every particular; his return into the province and journey to Quebec, for the purpose of putting that design in execution, is proved by Butterfield, Frichette, and Black. On a case so clearly proved by positive testimony, not controverted by any evidence on the part of the prisoner, I am confident you cannot entertain a doubt.

SUMMING UP.

The Honourable Chief Justice *Osgoode*.—Gentlemen of the Jury; The prisoner at the bar, David MacLane, stands indicted of the crime of high treason. The indictment contains two counts or charges; the first, for compassing the king's death, the second for adhering to the king's enemies; and in order to make good these charges, fourteen several overt acts or evidences of treason are imputed to him, the substance of which is,

1. That he conspired with divers persons unknown, to solicit the enemies of the king to invade the province.

2. That he did solicit the king's enemies to invade the province.

3. That he conspired with the king's enemies to excite a rebellion in the province, to invade the province with ships and armed men.

4. That he conspired with divers persons unknown, to raise a rebellion in the province, to aid and assist and to seduce the king's subjects to aid and assist the enemy in an hostile invasion of the province.

5. That he solicited and incited divers of the king's subjects to levy war and rebellion against the king in his province of Lower Canada, and to aid and assist the enemy in an hostile invasion of the same province.

6. That he solicited and incited divers persons not being subjects, to levy war against the king in his province, and to aid and assist the enemy in an hostile invasion of the province.

7. That he made ready and raised several men unknown, to levy war against the king, within the province, and to assist the enemy in an hostile invasion.

8. That he conspired with divers persons, unknown, to convey into the province arms and ammunition, with intent therewith to wage war against the king; and to assist the enemy in an hostile invasion.

9. That he collected information whether the king's subjects were or were not well

affected, and whether they would or would not join the enemy in an hostile invasion of the province, with intent to communicate it to the enemy.

10. That he acquired knowledge of the strength of the king's city called Montreal, and how it might be attacked and taken by the enemy, with intent to communicate it to the enemy.

11. That, being possessed of the information and knowledge set forth in the two last-mentioned overt acts, he departed from the parish of Quebec towards foreign parts, with intent to communicate it to the enemy.

12. That he entered the parish of Notre Dame de Quebec, &c. secretly and clandestinely under the feigned and assumed name of Jacob Felt.

13. That he conspired with divers persons unknown, to seize by surprise, the walled and garrisoned city of Quebec, one of the king's fortresses or fortified places, to cause a miserable slaughter of and destroy the king's faithful subjects, and to deliver the city into the hands of the enemy, for the aid and assistance of the enemy in the present war.

14. That he entered the walled and garrisoned city of Quebec, with intent to seize it by surprise, to cause a miserable slaughter, and to destroy the king's faithful subjects; and to deliver the city into the hands of the enemy, for the aid and assistance of the enemy in the present war.

These overt acts are charged under each count, and are laid in order to prove each species of treason.

Perhaps, gentlemen, at this distance from the place of the king's personal residence, you may think it unreasonable to impute to the prisoner the crime which constitutes the first charge brought against him, namely that of compassing the king's death; but, if the facts laid, are found to be true in contemplation of law, they have a tendency to that fatal end; and such compassing always forms a charge in indictments for this sort of treason. True it is, that the overt acts seem to range themselves most naturally under the second count, for adhering to the king's enemies, which is a distinct and positive head of treason. If then you find any difficulty in referring the acts charged to the first count, you may, if you think proper, direct your attention to the evidence given as tending to prove the second count in the indictment, which contains the charge of a declared treason and is therefore sufficient, if found, to support a conviction.

Gentlemen, it ought to be a matter of satisfaction, both to the court and the jury, that from a repeated course of determinations on this subject, the law is perfectly clear, and that we are travelling upon a well trodden path. The words of the statute are in themselves plain and intelligible.—If a man do adhere to the king's enemies, giving them aid and assistance in the realm, or elsewhere it is

declared to be treason. Such is the text, but the cases that have been determined under this clause, go a considerable degree farther; for it is not necessary, in order to complete the crime, that the aid and assistance should be actually given, nay, it is not necessary to be proved, as I shall explain to you by and by; but it is necessary that you should see that the aid and assistance was intended and that you should find it so. On the subject of intention, the distinction that was made by the attorney general, respecting the nature of crimes, by the English law, is certainly true, that crimes in general are not consummate by the intention, and that they must, in order to complete the guilt, be carried into execution; but that treason is an exception to this rule:—there is no doubt, that the observation, generally speaking, is just; for, an attempt to commit larceny, robbery, or murder, does not constitute the capital crime, yet there is a capital crime which is not unfrequently brought before a court of justice, and of course the nature of it must have been often explained in your hearing, gentlemen, which offers the strongest analogy to high treason, and may therefore give you a better insight into it, I mean the crime of burglary. Burglary is defined to be the breaking and entering into a dwelling house by night, with intent to commit a felony; it is not necessary that any thing should be carried away, not even of the value of this pen; but the intent is left for the finding of the jury, from the nature of the overt acts proved; if evidence be given of the breaking and entering, these are overt acts sufficient to call upon the jury to determine with what intent this was done; and if they believe it was with a felonious intent, the crime is complete, though, as I said before, no property is carried away. So in the case of treason, if a traitorous intention is disclosed by words or writings, and they are followed up by any acts tending to execute such design, although it be not complete, it is sufficient to ground a charge of treason, and it is left to the oaths and conscience of a jury to say with what view such a step was taken, although the party is stopped short before the final purpose was carried into effect; for, common sense tells us, we ought not to wait till the mischief is completed.

Gentlemen, I am well apprized that it is not customary for the bench to cite authorities for the opinions they deliver to the jury. It being the duty of the bench to explain the law, due credit is expected for the opinions they disclose, and I am happy to say that mine, since I have had the honour of a seat, have hitherto always met with a favourable acceptance; yet, as in a trial of such expectation and importance it cannot be but satisfactory to know what has been held on like occasions, I shall not think it unbecoming to show, by cases resolved, that the doctrine I advance has long since been declared,

acted upon, and confirmed by the most respectable characters that have administered the English law. Soon after the abdication of James the 2nd, lord Preston and two other gentlemen embarked on the Thames for France, with a written plan, in order to induce Louis 14th to invade England, pointing out the number of men requisite and the time and place fittest for the attack; they were taken a little below Gravesend, and though the design was not carried into effect, it was laid down by lord Holt and chief justice Pollexfen, as clear law without question, “if any persons do go into France to negotiate such a design as this, or do purpose to go into France and do any act in order thereunto, that is high treason.”* Lord Preston was told from the bench “you took water at Surrey stairs, which is in the county of Middlesex, and every step you made in pursuance of this journey, is treason, wherever it was.”† These parties were convicted (although they were leaving the kingdom) of compassing the king’s death, as well as of adhering to his enemies: The same law was laid down in the case of Vaughan,‡ who went cruising under a French commission, and though he had taken nothing, he was convicted and executed. In queen Ann’s time it was discovered, that one Gregg, a clerk in the secretary of state’s office, gave information to Chamillard, the French minister, of some expedition that was intended against Louis the 14th, his letters were intercepted, and on these overt acts he was indicted of compassing the queen’s death and of adhering to her enemies; he pleaded guilty to the charge and was executed.§ These cases are all mentioned by sir Michael Foster in his excellent discourse on High Treason, where he draws this conclusion, that the entering into measures in concert with foreigners and others, in order to effect an invasion of the kingdom, or going into a foreign country, or even purposing to go thither to that end, and taking any steps, in order thereto, these offences are overt acts of both species of treason. Another case, which carries the matters still farther happened in the reign of George the 2nd, which was Florence Hensley’s case. He was indicted of compassing the king’s death and adhering to his enemies. The chief evidence against him were certain letters that were intercepted at the post office, and never reached the place of destination. This might perhaps be thought a strong circumstance in mitigation: but you shall hear what lord Mansfield said at the trial, which I will read to you.

“As to the law. Levying war is an overt act of compassing the death of the king: an overt act of the intention of levying war, or of

* See Lord Preston’s case, *antè*, Vol. 12, p. 737.

† See Vol. 12, p. 749.

‡ *Antè*, Vol. 13, p. 485.

§ See his case, *antè*, Vol. 14, p. 1371.

bringing war upon the kingdom, is settled to be an overt act of compassing the king's death. Soliciting a foreign prince, even in amity with this crown, to invade the realm, is such an overt act, and so was cardinal Pool's case. And one of these letters is such a solicitation of a foreign prince to invade the realm.

"Letters of advice and correspondence, and intelligence to the enemy, to enable them to annoy us or defend themselves, written, and sent, in order to be delivered to the enemy, are, though intercepted, overt acts of both these species of treason that have been mentioned. And this was determined by all the judges of England in Gregg's case; where the indictment (which I have seen) is much like the present indictment. The only doubt there, arose from the letters of intelligence being intercepted and never delivered; but, they held that *that circumstance did not alter the case.*"^a

Gentlemen, perhaps you may think I have taken too wide a field, but I am desirous that you should know the opinion of the twelve judges of England, on a case that might appear to be attended with favourable circumstances. It is certainly going much farther than is necessary on the present occasion. I will therefore endeavour to make amends by fixing your attention to the point of law which ought to govern the present case, and which I think may be comprised in one sentence, which is this: every attempt to subject this province, or any part thereof, to the king's enemies, is high treason, and every step taken in furtherance of such attempt is an overt act of high treason. Here, gentlemen, is a plain text to assist you in pronouncing your verdict. The law on the subject is clear and intelligible, and it rests with you to determine, whether or no the overt acts charged in the indictment, or any one of them, was done in furtherance of the treason imputed to the prisoner. It is my duty, gentlemen, farther to observe to you, that by a statute passed in the reign of king William, it is enacted that no person shall be attainted of high treason but upon the testimony of two lawful witnesses to the same overt act, or one of them to one, and the other of them to another overt act of the same treason. These, gentlemen, are the most material points of the law upon the case which it is my duty to mention to you. There is likewise another circumstance necessary to be observed in this particular case, which is, the allegation contained in the indictment, that open war is yet carrying on between our sovereign lord the king and the persons exercising the powers of government in France. No formal evidence has been offered to prove this fact, because public notoriety has always been held as sufficient evidence in such cases; and it will

not occupy much of your time, gentlemen, to determine whether the fact exists.

Having laid down these principles, it becomes your duty, gentlemen, to apply them to the facts given in evidence, in proof of the overt acts charged in the indictment. To assist your recollection I will recapitulate the evidence as I have taken it down; making such observations as may occur to me in the course of it; but in so doing I beg it may be recollected, that you are by no means bound to adopt them: if you think them pertinent and applicable, allow them weight; if otherwise you will pass them over. In matters of law you are bound by the judgment of the court; but in matters of fact, you are to judge of the credit due to the witnesses that have been brought forward: you are to impute the overt acts given in evidence, to such motives as you think they may be fairly ascribed; for it is you who are to make the true deliverance.

The first witness called on the part of the prosecution, is William Barnard, who says—"I know the prisoner at the bar; the first time I saw him was in July, 1796, in the state of Vermont, near the Province Line; it was almost dark: the prisoner told me he wished to have some conversation with me; I stept on one side with him; he said he wished to be out of sight; we walked upon the shore of the lake: he said he had something of great importance which he wished to communicate, in the doing of which he put his life in my hands." Gentlemen, you will find in the progress of the evidence that the prisoner made this serious kind of address to several of the witnesses, which is a strong proof that he was well aware of the criminality of the business he came about. The witness goes on—"I desired him then not to do it: he said I might think it singular that a stranger should address himself in that way, but that I was not a stranger to him. He mentioned some circumstances which showed he had taken some pains to find me out: that I had been recommended to him as a person whom he could trust with a secret: He desired me not to divulge it, which I promised. He then said his business there was, to bring about a revolution in Canada: that he wanted some person to take the lead; that if I would undertake it, he would make my fortune: this was on the 26th of July. I asked him who recommended him to me; he would not tell who it was. I told him it was a plot of some enemy to ruin me, I was not his man, and turned short about; he requested me not to say any thing about it; that he should be in Montreal in a few days, when, perhaps, I should think better of it. About four or five days after, I saw him at Montreal; he asked me if I had thought of what he had mentioned to me at the Lines: I told him not much. He said, when I came to know who he was, he hoped I should think differently, but if I would engage not to take an active

* See Hensley's case, *anté*, Vol. 19, p. 1344. See also the cases of Jackson and Stone, *anté*, Vol. 25, pp. 783, 1155.

part I should be protected. This was the substance of which I informed Mr. Maccord, a magistrate. I was at La Prairie in November last, about the 7th; it is about three leagues from Montreal. I then met the prisoner; I had previously seen him a few days, but had no conversation with him. He then told me I must think differently of that matter than what I had done in Summer. I told him there had been some disturbances like what he had been talking about; He said those disturbances were against their cause; he said this was certainly a conquered country, for there would be an army here in the Spring. He then said, if he could depend on me he would tell me something farther; that he wished me to take an active part in it; I said I would not." Now, gentlemen, if you believe this witness, this is the second time he mentions a solicitation on the part of the prisoner, that he, the witness, should assist the enemy in the projected invasion, which is the 5th overt act charged in the indictment. The witness speaking of the prisoner, goes on to say—"He said I might be of service and need not appear in it, by finding out where the seminary and the merchants kept their money. He wished me to sound the minds of the people, to know who were likely to be their friends; and that I would use my influence among the Canadians to keep them still this winter; that a blow would be struck in the Spring, at a time when it would not be expected. They wished to confine all those against them, as they did not wish to take any person's life."

On his cross-examination, he said, he had no promise from government, and that the prisoner told him he was a subject of the United States. I observed that several of the witnesses are examined to this point, and upon the whole it appears to be sufficiently established; but what use is to be made of this fact I cannot immediately discover. By the testimony of this witness, as well as of every other, it appears that the prisoner was a sojourner in the province, he therefore owed an allegiance to the king whilst he remained within the king's dominions, in return for the protection he experienced, and for the security with which he possessed his life and property. It will not, I trust, be made a question, whether, having availed himself of the benefit of our laws, he is at liberty to transgress them, because he is a subject of a foreign state, or that that can be offered in extenuation.

The next witness on the part of the crown, gentlemen, is Elmer Cushing, who is a British subject, who has known the prisoner ten or eleven years. He says—"I saw the prisoner at my house on the 5th November last, at Montreal; he came before breakfast; I was absent when he came; he took his breakfast, went out, and returned between three and four o'clock. I observed his cloaths covered with small burrs; I asked him where

he had been? he answered upon the mountain of Montreal, and observed that it might be made a place of great command over Montreal, in case of war. He then began to talk of the situation of the country. I observed the Canadians had made a considerable disturbance, and seemed to be disaffected; on this, he said, he should wish to have some private conversation with me: I retired into a private room with him. He informed me he had a secret which he wished to impart to me, which was of the utmost consequence; he would not mention it unless I would swear never to reveal it. I said my word was sufficient; he said he could not reveal it unless I would first swear, for he was putting his life into my hands."—Here you observe, gentlemen, the same solemn address that was made to the last witness by the prisoner, which shows he was well aware of the danger of his enterprise.—"I said the secret might be of prejudice to me; he answered, he could make it advantageous: I then told him I would conceal it; he made me make a solemn promise not to reveal his name. He then told me there would be a severe attack upon this province early in the Spring, that would at once overthrow the present British government; that he had been employed in it ever since he had been in this country, and was so still: he said the attack would be made by a fleet from France with ten or fifteen thousand men; he said that the fleet then on the coast was intended for the attack next year, but that the season was too advanced; he said he was employed by Adet the French minister at Philadelphia, and that he had something which would convince me he was not acting without authority. He got his saddle-bags and took a pair of shoes out of them, one of which had a hole on the outside sole, near the toe. He pulled a paper out from betwixt the two soles, which was signed *Adet*. It was written in an obscure style in English, and was a certificate that he Adet, was concerned in the family affairs of the prisoner."—Now, gentlemen, if you believe this account of the witness, it certainly forms a circumstance of such suspicion, as to require some deliberation on its import. The equivocal language of the paper, the place where it was deposited, are matters to which your observation need not be called. Family concerns, the conduct of a lawsuit, or the purchase or sale of goods, is the usual pretence for a correspondence to carry on dark purposes. The witness appears to be struck with this, for he says—"I asked the prisoner why the paper was written in that style? he answered it was a dangerous piece of business to go upon, and if the paper should be found upon him, it could not be produced in evidence. Maclean's name was in the paper: he said it was a draft of his own, and that Mr. Adet would have signed any paper he pleased. He said there was no occasion for a regular commission till matters came to the test; that he had just come from the

French minister, and should immediately return to Philadelphia on his leaving Montreal, where he should receive his orders and immediately set sail for France; that he should not return to Montreal till Spring, to take the command in that quarter."—Now, gentlemen, should you believe the testimony of this witness, and I do not find any attempt made to impeach his credit, here is abundant evidence to prove the third overt act charged against the prisoner—that he conspired with the king's enemies to invade this province; and this evidence is confirmed by the next witness, who swears to a conversation with the prisoner, in which the prisoner acquainted him that he was employed by the French minister for the same purpose; so that here are two witnesses to one and the same, namely, the third overt act. The witness, gentlemen, goes on to say—"The prisoner told me the attack was to be made at Quebec and Montreal at one and the same time; that the first object would be, to secure the money and valuable property, to defray the expenses of the war: and next to secure all the priests and leading characters in the province, *effectually* to secure, was the word: he said that those who were favourable to the cause should be protected in person and property; and as for those who were adverse, it would fare hard with them. That he should be with a number of persons under him at Quebec, to be got in in rafts or whatever way he could, for the purpose of breeding a mutiny, and spiking the cannon at the time the attack should be made: he did not expect to need the Canadians till the blow was struck. That he himself was to command at Montreal: that arms and ammunition were to be furnished through the States, by the French minister Adet at Philadelphia. He informed me he had a number of men in the States, who had engaged to furnish a number of men each, which were to come in and assist at the attack."—This, gentlemen, goes to establish the fourth overt act—"He assured me that I might look upon this as a conquered country; for the French were determined to have it by conquest or treaty. He wished to engage me to take an active part in the business, that I should have any standing or any reward I would wish to accept of."—Here, gentlemen, is evidence to the same overt act that was sworn to by the first witness Barnard, which, I think, is the fifth—that he solicited divers of the king's subjects to join in the projected rebellion, and fully establishes the proof of that overt act likewise by two witnesses—"He said if I would give any information respecting the country, I should be protected in person and property; I told him I would make no promises, nor have any thing to do with it. He said, you can certainly do this to quiet the minds of the Canadians till spring; for all this disturbance of the Road act is detrimental to the cause. He then said he had gone as far as he could do, unless I would promise to

take an active part: that if I would do so, he had other matters to reveal; but if ever I revealed what he had said, my life would be taken immediately. He said I might alter my mind, and if any one should come and tell me he came to talk on family matters, I might depend on not being deceived."

On being cross-examined, he says, he came down last fall to give information of a plot against government, but that he never mentioned MacLane's name; that the prisoner is generally reputed to be an American subject.

Gentlemen, the evidence of this witness and the last is very material; they confirm each other in the general account of the project, and if minutely scrutinized, might be found to prove many of the overt acts charged. I have pointed out one or two of them, on which there can be little doubt, should you believe their testimony.

The next witness, gentlemen, is Francis Chandonet, a subject of the United States; He says—"The first time I saw the prisoner was last summer. In the beginning of the winter I saw him again: he came to a place about three quarters of a league above the Line, in the United States; he met me on the bank of the Lake: he asked me if my name was Chandonet; I answered, yes: he asked me to take a walk with him, as he had something to communicate in private. He told me he was upon business of the utmost importance, and that he was recommended to me as a proper person to take a part in it, but I must promise never to divulge it; I told him I would make no such promise till I knew the business; he said it was of a political nature, which made it necessary. I again refused; he said I would not be accessory to the taking away a person's life, therefore he would go on. He then told me he was employed by the French to go into Canada, and feel the minds of the people, to see how they were affected to the present government, which business he had already begun, and found that a large body of the Canadians could be raised, to have an insurrection in the country."—This evidence, if believed, proves the ninth overt-act charged in the indictment; that the prisoner collected intelligence respecting the disposition of the king's subjects towards his government, with intent to communicate it to the enemy, provided always, that you, gentlemen, believe it was with such intent. The witness goes on, that—"The prisoner said he had learned I was going to live on the river St. Lawrence, near St. Regis; that, that would be a very suitable place for such a person, if I would join him to carry on his plan, which was to secrete a quantity of arms and ammunition in rafts, in the spring of the year, both by lake Champlain, and the river St. Lawrence; that a quantity of arms and ammunition might be concealed in rafts in Chateaugay river; that those would be the safest as supposed to come from Upper Canada."—This, you will observe,

gentlemen, goes to the eighth overt-act charged. The witness proceeds, that "the prisoner said, he had a brother coming to the Lines, with a large quantity of dry goods; that these goods were for collecting a store of provisions against the insurrection, which would furnish him with a good excuse to go backwards and forwards, without being suspected. He pressed me to take a part which I would not: he then told me if I was to divulge any thing of the transaction, he must inevitably be hung."

On his cross-examination, the witness says, he is a Canadian by birth, that he left Canada with the American army in the year 1776, being promised a commission, which he had, and was afterwards naturalised. That he was taken up upon suspicion, and sent out of the province as an alien; but that, conscious of his innocence, he wrote to Mr. Richardson, the magistrate at Montreal, that he was ready to take his trial upon any charge that could be brought against him; that, upon coming into the province, he was subpoenaed to give evidence.

Gentlemen, the next witness that is called is Thomas Butterfield, who is a subject of the United States, and lives in Vermont. He saw the prisoner in November last, and says, that "the prisoner asked me to take a walk, and told me he had a matter to inform me of, provided I would keep my counsel, it would be of advantage to me; he informed me he had been in Canada, in order to sound the minds of the Canadians, and to see if they were willing to rise and take the province out of the British hands: that he had been in before, in the course of the summer, and had been out to Philadelphia on the same business; he told me he was employed by the French minister Adet, and that he was then returning to him again at Philadelphia; that he had been into Montreal; that the minds of the people were ready and willing to lend a hand to surprise the country, provided they had any one to lead them; he told me he was then going to Philadelphia to Adet, with that information."—Here gentlemen, is the fullest corroboration of what the other witnesses have sworn respecting the ninth overt-act.—"I asked him if he had any one he could depend on, he answered one Black or Blake, and mentioned a number of others that he had seen; he mentioned one Barnard, whom I did not know: that he was going to make his returns of what he had done in this country, to Adet at Philadelphia; I understood him, that he had a letter from one Black or Blake to Adet, but I did not see it. We had some conversation about taking Quebec; the prisoner seemed to think, if that could be got it would do; and proposed bringing in a number of people upon rafts: he told me he should go on his journey, and expected to be back about April or May. I undertook to engage with him in the taking of the country. About the 20th April he returned to Swanton,

and came to a tavern close to my house. He gave me a wink to step aside, asked me if I had been in Canada during the winter; I said not; he asked, whether I had heard his name mentioned as to any discovery: I told him not: he said he had heard he was discovered in Canada, and that it was not safe for him to go in. Next morning he asked me to assist him with a boat and two hands to go to Isle la Motte; I procured the hands for him. On the 26th or 27th of April, he engaged me to go to St. John's in Canada, to fetch Frichette to him. He gave me money for my expenses, and I did my errand and brought Frichette: they walked out together, after which he told me he had determined to go into Canada with Frichette. The prisoner told me, the money I gave you was not for your pay, but for your expenses; your pay will begin from the time you undertook."—This, gentlemen, is evidence on the seventh overt-act, which charges the prisoner with enlisting several persons.—"He told me, that he and Frichette were to go to Quebec to view the place, and lay some plan to take the place; but what plan he could not say, till he had seen the place: he told me he had left all his papers with his brother at Mr. Scovill's: that Scovill had moved to Swanton, to make a home for him and his people."

On his cross-examination, he says, "I first saw the prisoner about last April was a year, I do not know whether he is a subject of the United States, he told me so; he told me he was born in Boston. I was taken up in May last, for aiding and assisting this Maclane, and was sent down in custody." An objection was made, gentlemen, to this witness's testimony, on the ground of his being an accomplice: if this doctrine were to be allowed, it would be a very difficult matter ever to obtain a conviction in a case of high treason. Men engaged in treasonable attempts, do not publish their intentions at the market cross. It is very rare that direct testimony can be had from persons not implicated in the crime. In the trials upon the assassination plot in king William's time, every witness, as far as I can recollect, was an accomplice; they are admitted for necessity's sake, or the most dangerous treasons might pass unpunished, it certainly is an imputation upon their credibility, and the jury are to determine on the extent of it, but it is equally certain, that it does not affect their competency.

The next witness called is Charles Frichette. He says, "I know the prisoner: I saw him first in June 1796, by the name of Maclane: he came to my house at St. John's, and asked if I knew one Frichette; I said I am the person. Have you any horses? Yes. We went into the field: he asked me if I could keep a secret, and was an honest man: I told him not to trust me too much; he said he had a secret which he could not tell without an oath: I took an oath: he asked if I would go to Philadelphia or to France: I asked for what:

he said, to see the French minister: I said no, it was too far: he asked me if I could procure a signature of five or six honest persons; I asked why; he said, to show there were more people who wished for a change of government, than were contented with the present government: I said, it was impossible. He bid me not be afraid, that he was an officer in the French army. He asked repeatedly for the certificate: but I did not procure it. About the end of April, Butterfield came for me, I went to Maclane: he gave me a good reception: he asked what news in Canada: I said none; if he might go thither: I said yes: he then said we will go together, perhaps to Quebec: we agreed to go, but did not go by St. John's: we passed behind the Fort at day break, and proceeded on the south shore road to St. Nicholas: we had much conversation: he said the country wanted some English farmers for its improvement. He asked me why the prisoners in gaol at Quebec were confined, and whether I thought the Canadians would revolt; I said no, they were not very warlike, nor desirous of war: he did not tell me he was come to make a revolt: he laughed when he spoke about a revolt: he asked me if I knew one Black a member of the parliament: I said no: he afterwards told me he was come to take Quebec: I said, if I thought so, I would go back; he said he did not mean to hurt any body, that if he had 500 men with pikes of wood, 6 or 7 feet long, he would take the town: this was said at St. Nicholas: he desired me to ask my brother respecting the people in Quebec, why they were in gaol; I did so; he told me for making disturbances about the Road act: we came to Quebec together, landed at Wolfe's Cove: he sent me for Mr. Black: I found him, and took him to Maclane: he desired Mr. Black to excuse the liberty he had taken in sending for him, being a stranger, he was afraid of being suspected: this was about two o'clock in the afternoon: Black then told the prisoner, that I had informed him of the intention of the journey: Mr. Black advised him to go back; for the Canadians were not worth doing anything for: Mr. Black asked the prisoner what plan he had for taking the town; the prisoner answered, it is very easy to take it with 500 men; that he would take it very easily; that each man might be armed with a pike about six or seven feet long, pointed with iron, and hardened in the fire; and if the town gates were open, one company might come in at one gate, and another at another gate, and strike at the same time: he said the troops would be so surprised, that they would not know which way to turn: at this time I fell asleep: when I awoke, I heard the prisoner say to Mr. Black, that something might be given to the troops to set them asleep; Mr. Black said, that would do very well, that the greater part of the troops were volunteers, who desired nothing better than to lay down their arms. He told the

prisoner not to be afraid, but to come to his house, to dress himself like a gentleman, and take a walk about the town; at length the prisoner consented to come, but Mr. Black did not approve of coming in with him, because he said, he himself was watched. He desired me to bring him to his house in the evening, which I accordingly did: the prisoner told me to call him *Felt*; which I did." The witness is in custody for high treason. Gentlemen, you have seen the manner in which this witness has given his evidence: he seems to have little knowledge of the sanction of an oath, or at least, little regard for it, from the disgraceful way in which he gave his evidence. This is one of the advantages of an open examination in the face of the country. You are to judge of the credit due to his testimony; but for my own part, except in matters where he is confirmed by others, and what he has said of evident facts, I should not be much disposed to believe him.

The next witness they called, gentlemen, is John Black. He says, that "Frichette, the last witness called, at my house on the tenth of May last, to know if I would buy any oak timber, which we bargained for; afterwards he told me he wanted to speak with me in private; I went with him into another room, when he took me by the hand, saying, You will be surprised when I tell you I have no oak to sell, I am come upon a business of a quite different nature; then squeezing me by the hand, he said, are you the Mr. Black that was in gaol in the year 1794: I told him I was: you have been much injured, but your injuries are now almost at an end, the French and Americans have taken up your cause, and you will soon triumph over all your enemies. I wished to know why he came to me; for I had already been caught by insidious men: then taking me by both hands, he said, are you really to be depended on: I told him I was to be depended on: then, says he, there is a French general within a quarter of a league from this place, who wishes to have a conversation with you, respecting the taking of the garrison of Quebec, I asked by what means; has he an army: he answered no he has no army, he wishes to concert measures with you, and you must come immediately with me to see him. About two o'clock we set off together on foot across the plains of Abraham, down to Wolfe's Cove, and up Mr. Mabane's hill: when we came to the side of the wood, Frichette asked me to go in with him, I at first declined it; Frichette went in; he came out again shortly after, and I saw him beckon to me, I then went about 200 yards into the wood, where I found the prisoner with a very long beard: he shook hands with me, and expressed himself glad to see me, begged pardon for sending for me, but added, that he wished to see me on a matter of great importance. I think it proper for me to mention here, that I never saw the

gentlemen, goes to the eighth overt-act charged. The witness proceeds, that "the prisoner said, he had a brother coming to the Lines, with a large quantity of dry goods; that these goods were for collecting a store of provisions against the insurrection, which would furnish him with a good excuse to go backwards and forwards, without being suspected. He pressed me to take a part which I would not: he then told me if I was to divulge any thing of the transaction, he must inevitably be hung."

On his cross-examination, the witness says, he is a Canadian by birth, that he left Canada with the American army in the year 1776, being promised a commission, which he had, and was afterwards naturalised. That he was taken up upon suspicion, and sent out of the province as an alien; but that, conscious of his innocence, he wrote to Mr. Richardson, the magistrate at Montreal, that he was ready to take his trial upon any charge that could be brought against him; that, upon coming into the province, he was subpoenaed to give evidence.

Gentlemen, the next witness that is called is Thomas Butterfield, who is a subject of the United States, and lives in Vermont. He saw the prisoner in November last, and says, that "the prisoner asked me to take a walk, and told me he had a matter to inform me of, provided I would keep my counsel, it would be of advantage to me; he informed me he had been in Canada, in order to sound the minds of the Canadians, and to see if they were willing to rise and take the province out of the British hands: that he had been in before, in the course of the summer, and had been out to Philadelphia on the same business; he told me he was employed by the French minister Adet, and that he was then returning to him again at Philadelphia; that he had been into Montreal; that the minds of the people were ready and willing to lend a hand to surprise the country, provided they had any one to lead them; he told me he was then going to Philadelphia to Adet, with that information."—Here gentlemen, is the full corroboration of what the other witness have sworn respecting the ninth overt-act. "I asked him if he had any one he could depend on, he answered one Black or Blake and mentioned a number of others that he had seen; he mentioned one Barnard, whom I did not know: that he was going to send his returns of what he had done in the country, to Adet at Philadelphia; I showed him, that he had a letter from one Black or Blake to Adet, but I did not see it; he had some conversation about taking the prisoner seemed to think, if that got it would do; and proposed bringing a number of people upon rafts: he told me he should go on his journey, at about the 20th April or May, and engage with him in the same way. About the 20th April he

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On his cross-examination, the witness says, he saw the prisoner in November last, and says, that "the prisoner asked me to take a walk, and told me he had a matter to inform me of, provided I would keep my counsel, it would be of advantage to me; he informed me he had been in Canada, in order to sound the minds of the Canadians, and to see if they were willing to rise and take the province out of the British hands: that he had been in before, in the course of the summer, and had been out to Philadelphia on the same business; he told me he was employed by the French minister Adet, and that he was then returning to him again at Philadelphia; that he had been into Montreal; that the minds of the people were ready and willing to lend a hand to surprise the country, provided they had any one to lead them; he told me he was then going to Philadelphia to Adet, with that information."—Here gentlemen, is the full corroboration of what the other witness have sworn respecting the ninth overt-act. "I asked him if he had any one he could depend on, he answered one Black or Blake and mentioned a number of others that he had seen; he mentioned one Barnard, whom I did not know: that he was going to send his returns of what he had done in the country, to Adet at Philadelphia; I showed him, that he had a letter from one Black or Blake to Adet, but I did not see it; he had some conversation about taking the prisoner seemed to think, if that got it would do; and proposed bringing a number of people upon rafts: he told me he should go on his journey, at about the 20th April or May, and engage with him in the same way. About the 20th April he

he said, to see the [redacted] no, it was too far: he [redacted] cure a signature of five [redacted] I asked why; he said [redacted] more people who witness [redacted] vernment, than were [redacted] sent government: I [redacted] He bid me not be afraid [redacted] in the French army. [redacted] for the certificate: but [redacted] About the end of Apr. [redacted] me, I went to Macine. [redacted] reception: he asked [redacted] said none; if he [redacted] he then said we will go [redacted] Quebec: we agreed to [redacted] St. John's: we passed [redacted] break, and proceeded [redacted] to St. Nicholas. [redacted] he said the [redacted] farmers for its [redacted] why the prisoner [redacted] confined, and [redacted] dums would [redacted] very [redacted] tell me he was [redacted] laughed when [redacted] asked me if I [redacted] so the [redacted] told me he was [redacted] and if I thought [redacted] nearly 500 men were [redacted] at (ex-500 men were [redacted] duced, he would [redacted] personal Nicholas: he [redacted] to assist the [redacted] divers of the [redacted] that he so-jects: But- [redacted] description; [redacted] The ninth, [redacted] are proved by [redacted] field. The two [redacted] ninth; they men- [redacted] from Montreal, [redacted] the prisoner told [redacted] delphia to make his [redacted] discourse with Adet, [redacted] general, namely Cush- [redacted] the certificate in the [redacted] utterfield and Black, is [redacted] third overt act, that he [redacted] ing's enemies to excite a [redacted] The thirteenth and [redacted] acts, that he conspired to [redacted] and garrisoned city of [redacted] by Frichette and Black: [redacted] assuming the name of Felt, [redacted] act, in which they are con- [redacted] Ryland. The taking the name [redacted] in itself criminal, unless it be [redacted] pose charged in the indictment, in [redacted] it is certainly an overt act. The [redacted] charges him with en- [redacted] believe, only prov- [redacted] hth, that he con- [redacted] ce arms and am-

ik, only sworn to by Char- precisely the case that was statute of William, namely, [redacted] speaks to one overt act, [redacted] tness to another overt act of [redacted] of treason. So that, if there [redacted] evidence in the present case, but [redacted] erfield and Chandonet, confined [redacted] acts, it would rest with you to [redacted] their evidence, and if you believed [redacted] testimony would alone be suffi- [redacted] port a conviction under the statute. [redacted] the evidence that has been laid before [redacted] you are not reduced to these straits. [redacted] you believe the witnesses that have [redacted] produced, and no attempt has been made [redacted] speech their credit (on the contrary, the [redacted] oner, with a becoming spirit of candour, [redacted] nits, for aught he knows, they may be all [redacted] honest men), it is my duty to tell you, they [redacted] have proved sufficient, and more than suffici- [redacted] ent to maintain the indictment. Sorry am I [redacted] to say, that nothing in the shape of evidence, [redacted] has been offered in behalf of the prisoner, or [redacted] I should have studiously given it all the [redacted] weight to which it might be fairly entitled. An objection was taken that some of the wit- nesses were still in custody as accomplices; I have already given an opinion on that head, and marked what degree of credit ought to be given to the disgraceful evidence of Frichette: but, admitting the objection to have that force which it has not, how is the testimony of the other five disinterested persons, whose charac- ters are beyond reproach, to be disposed of? I believe it will rarely be found, in state pro- secutions for treasons of this sort, that out of seven witnesses five are not in the most dis- tant manner implicated in the transaction. From the state of the evidence as it lies before you, gentlemen, you have no counter-balance to examine, for it is all in one scale. The whole must turn upon that degree of credit to which you think the witnesses, some of whom are known to you, are entitled. A considerable period of time, and variety of circum- stances are contained in the scope of their evidence. If it could be supposed that any sinister design were intended against the pri- soner, this would be the worst way of con- ducting it; as by the breach of a material link, when every connecting part is subject to proof, the chain might fall to the ground. On the other hand, it must be more satisfactory to you, gentlemen, who have your consciences to deliver, should you find the charge made out by the uniform and consistent testimony of different persons, in different places, and at different periods, than if it were a single fact, to be proved at one time and place; for to those accustomed to the investigation of crimes, the former sort of proof, as it is most difficult to be made out, has always appeared the most convincing.

Having thus endeavoured, gentlemen, to explain the law in this case, and having re- peated the evidence, it [redacted] to de-

prisoner till I then saw him in the wood, nor had I ever heard of, or knew there was such a man in existence; and as I was uncertain in regard to my situation, when thus in the wood, I therefore agreed to every measure the prisoner proposed."—Gentlemen, on this occasion, the Court think it a matter of justice due to Mr. Black, thus publicly to declare their opinion, that through the whole of this business, he has behaved like a zealous and faithful subject, and has conducted himself with great propriety and discretion, he goes on to say—"The prisoner then said, his man had told him, that he had explained to me a part of his plan. My plan, said the prisoner, is that of humanity; I am sorry to see a great people labouring under the tyranny of England. I propose to push the British government from the continent of America. I asked him by what means; he answered, eight or ten men of influence, such as I might be one, might raise, under plausible pretences, as many people as possible, who at a certain appointed time, would join with others, who were to come in to him from the States, under various pretexts of seeking labour, and that he would arm them with pikes eight feet in length, headed with iron, and hardened in the fire, which he considered to be 18 inches longer than the British musket, and bayonet."—This, gentlemen, is direct evidence, in support of the 13th and 14th overt-acts charged, and being thus seriously mentioned to this witness by the prisoner, may explain to you the real drift of his conversation with Fichette, to whom he did not probably choose, in the first instance to open his scheme in positive terms, the witness then goes on to say, that "the prisoner thought laudanum might be given to the troops with effect: that the attack must be sudden; they would rush in, but not take a life if possible to avoid it; he hoped none would be taken, but at the same time, for the sake of posterity, all who resist must fall; he farther observed to me, we must take care not to injure the works; for that would render us vulnerable after we were masters of the garrison." Here, gentlemen, is an avowal, as express as language can make it, of his design to execute the project charged against him in the 13th and 14th overt-acts—"The prisoner said, he left Mr. Adet on the 7th of April, who was going to France on the 10th; that both he and the Spanish minister were concerned in the measure; observing, that Adet is the man of business, the Spaniard is a fop: the prisoner said, he had so concerted measures with Adet, that if we could but possess ourselves of the garrison by surprise, it could never be recovered from us, for, he said, besides the measures taken by the French and Spanish ministers, I have 15,000 men at the Lines ready at a nod, with part of which I mean to garrison this place, and with the remainder, perhaps form an expedition against Halifax. Till the latter part of our conver-

sation, I understood his name to be Felt; but he then gave me two letters, one directed to John Blackwood, esq. and the other directed to myself, recommending the prisoner as a gentleman highly worthy of notice, by the name of colonel David Maclane; he told me, that Mr. Adet was gone to Europe, for the purpose of bringing a force to co-operate with the 15,000 men that were to be brought in from the States: he made great enquiries concerning the property, public and private, in Quebec: I told him I thought there might be from three to five hundred thousand pounds: he said the property was intended to be given to those who should take the city: he told me that he had been in the province in October last, that the government boasted of having quelled the tumults at Montreal, but that in reality it was he that had done it. I advised him to come into town after dark; he expressed his fears at being discovered, and said, that government had offered 500 dollars for his person: however, he consented and gave me his pocket-book, in which his name was written, to prevent detection in case he was taken. He was conducted by Fichette to my house, when night came on: as soon as I came to town, I gave information to a magistrate; and the prisoner was apprehended the same evening, about eleven o'clock at my house." Here, gentlemen, is a very clear and distinct account of many of the material parts of this transaction; it confirms the account given by the former witnesses of the prisoner's being at Montreal in October last, and is direct and positive with regard to his intentions on his last coming-in; and, coupled with the testimony of Fichette, in those parts where he confirms it, amounts to a full proof of the overt-acts mentioned just now, and also of the 13th, which charges the prisoner with having assumed the name of Felt, for the purposes therein assigned; and in this particular, he is farther confirmed by the evidence of Mr. Ryland, who is the last witness called, who says,—"Between 11 and 12 o'clock at night, on the 10th of May, I received a deposition made by the last witness, containing in substance the evidence which he has just given, from which I learnt that Maclane was in Quebec. I communicated it to the governor, and, by his order, went with a small party of soldiers, to apprehend him. I found him in bed at Mr. Black's house, in the suburbs: I awoke him, and asked him what his name was; he said Felt; I told him I understood it was Maclane; he again asserted, that his name was Felt, and that I was mistaken. I wished to give him a receipt for the monies he had with him, and asked him in what name; he answered Jacob Felt; I gave him a receipt for monies found on Jacob Felt, alias David Maclane." On being cross-examined, he says, that the conduct of the prisoner was perfectly decent and collected, not like a man conscious of any crime.

This, gentlemen, is the whole of the evidence; for, on the part of the prisoner, they have called no witnesses.—The prisoner (not very judiciously, I fear) has undertaken to make his own defence: that defence you have heard, in which he admits a number of the leading facts alleged against him by the witnesses; but attempts to put a different colour upon some, and to explain away others. You have likewise heard his counsel, who have availed themselves of all the very slender topics the nature of the case afforded in the prisoner's behalf. You have likewise heard the very able and satisfactory reply, made by the attorney-general, to the defence that has been set up, who, by a few very natural, but cogent questions, has shown how little these transactions partake of a mercantile nature. But, gentlemen, you will please to recollect that it is not from the speeches you hear, but according to the evidence you hear, that you are sworn to deliver your verdict. That evidence I have repeated to you as fully as I am able; and it appears to me, that by far the greater part of the overt acts charged have been fully proved according to the statute. I will not undertake to ascertain in this cursory manner, the precise number, because, in so serious a matter, I should be sorry to hazard any thing in which I am not perfectly founded. The fifth and sixth overt acts are clearly proved, because, you may recollect, that (excepting the last), every witness produced, whether subject or alien, swore to a personal solicitation of them by the prisoner, to assist in the invasion. Now the substance of the fifth overt act is, that he solicited divers of the king's subjects: and the sixth, that he solicited divers persons not being subjects: Butterfield and Chandonet are of this description; and the four others are subjects. The ninth, tenth, and eleventh overt acts, are proved by Barnard, Cushing and Butterfield. The two former prove the ninth and tenth; they mention the prisoner's departure from Montreal, and Butterfield swears that the prisoner told him he was going to Philadelphia to make his returns to Adet. This intercourse with Adet, which is sworn to by several, namely Cushing, who also speaks of the certificate in the shoe, together with Butterfield and Black, is the substance of the third overt act, that he conspired with the king's enemies to excite a rebellion in the province. The thirteenth and fourteenth overt acts, that he conspired to surprise the walled and garrisoned city of Quebec, are proved by Frichette and Black: who also prove his assuming the name of Felt, the twelfth overt act, in which they are confirmed by Mr. Ryland. The taking the name of Felt is not in itself criminal, unless it be for the purpose charged in the indictment, in which case it is certainly an overt act. The seventh overt act, which charges him with enlisting several persons is, I believe, only proved by Butterfield, and the eighth, that he conspired with others to introduce arms and am-

munition is, I think, only sworn to by Chandonet. This is precisely the case that was foreseen by the statute of William, namely, where one witness speaks to one overt act, and another witness to another overt act of the same kind of treason. So that, if there were no other evidence in the present case, but that of Butterfield and Chandonet, confined to these two acts, it would rest with you to consider of their evidence, and if you believed them, such testimony would alone be sufficient to support a conviction under the statute. But by the evidence that has been laid before you, you are not reduced to these straits. Should you believe the witnesses that have been produced, and no attempt has been made to impeach their credit (on the contrary, the prisoner, with a becoming spirit of candour, admits, for aught he knows, they may be all honest men), it is my duty to tell you, they have proved sufficient, and more than sufficient to maintain the indictment. Sorry am I to say, that nothing in the shape of evidence, has been offered in behalf of the prisoner, or I should have studiously given it all the weight to which it might be fairly entitled. An objection was taken that some of the witnesses were still in custody as accomplices; I have already given an opinion on that head, and marked what degree of credit ought to be given to the disgraceful evidence of Frichette: but, admitting the objection to have that force which it has not, how is the testimony of the other five disinterested persons, whose characters are beyond reproach, to be disposed of? I believe it will rarely be found, in state prosecutions for treasons of this sort, that out of seven witnesses five are not in the most distant manner implicated in the transaction. From the state of the evidence as it lies before you, gentlemen, you have no counter-balance to examine, for it is all in one scale. The whole must turn upon that degree of credit to which you think the witnesses, some of whom are known to you, are entitled. A considerable period of time, and variety of circumstances are contained in the scope of their evidence. If it could be supposed that any sinister design were intended against the prisoner, this would be the worst way of conducting it; as by the breach of a material link, when every connecting part is subject to proof, the chain might fall to the ground. On the other hand, it must be more satisfactory to you, gentlemen, who have your consciences to deliver, should you find the charge made out by the uniform and consistent testimony of different persons, in different places, and at different periods, than if it were a single fact, to be proved at one time and place; for to those accustomed to the investigation of crimes, the former sort of proof, as it is most difficult to be made out, has always appeared the most convincing.

Having thus endeavoured, gentlemen, to explain the law in this case, and having repeated the evidence, it remains for you to de-

termine upon that evidence; for, the verdict must be yours. If you have any reasonable ground of doubt, I need not observe to you that it is the invariable direction of an English court of justice to lean to the side of mercy. If you disbelieve the evidence in all its parts you cannot convict the prisoner: on the other hand, if you believe the witnesses, and that the treasons charged against him, or either of them, have been clearly and satisfactorily proved, you will find him guilty: the whole is left to you to determine this issue according to your oath.

[Then an officer was sworn to keep the Jury, who withdrew for about twenty minutes, and then returned.]

Clerk of the Arraignment.—Gentlemen of the Jury; answer to your names.

John Blackwood, &c. &c.

Clerk of the Arraignment.—Gentlemen, are you all agreed upon your verdict?

Jury.—Yes.

Clerk of the Arraignment.—Who shall speak for you?

Jury.—Our Foreman.

Clerk of the Arraignment.—David Maclane, hold up your hand [which he did]. Look upon the prisoner: How say you—Is he Guilty of the felony and high treason whereof he stands indicted, or Not Guilty?

Foreman.—GUILTY.

Clerk of the Arraignment.—What goods or chattels, lands or tenements, had he at the time of the felony and high treason by him committed, or at any time since?

Foreman.—None to our knowledge.

Clerk of the Arraignment.—Then hearken to your verdict as the Court hath recorded it.—You say, that David Maclane is Guilty of the felony and high treason whereof he stands indicted; but that he had no goods or chattels, lands or tenements at the time of the felony and high treason by him committed, or at any time since to your knowledge, and so you say all.

Jury.—Yes; we do.

Clerk of the Arraignment.—Gentlemen of the Jury, the Court discharges you, and thanks you for your service.

Mr. Attorney General.—Upon the verdict as recorded, I humbly move for judgment of death against the prisoner.

Mr. Pyke.—This is unexpected. We hope the Court will allow us the four days which are usual, to move in arrest of judgment.

Mr. Attorney General.—In cases at bar, four days are usually allowed; but in cases decided before justices of Oyer and Terminer the practice has been different. In the instances of sir John Freind,* of Charnock,† of Lowick,‡ and very recently of De La Motte,§

* See the case, *antè*, vol. 13, p. 64.

† *Antè*, vol. 13, p. 1455.

‡ *Antè*, vol. 13, p. 307.

§ *Antè*, vol. 21, p. 814.

all tried under commissions of Oyer and Terminer, judgment was given *instantly*. If the gentlemen have any thing to move in arrest of judgment, they have now the opportunity. I am ready to answer them.

Chief Justice.—The practice certainly is as the attorney-general has stated it. He moves for judgment, and we are bound to pronounce it, if nothing to arrest it is offered by the prisoner.

Clerk of the Arraignment.—David Maclane you stand convicted of felony and high treason, in compassing the death of the king, and in adhering to his enemies—what have you to say, why the Court should not give judgment against you to die according to law.

Prisoner.—My counsel will state what I have now to offer.

Mr. Pyke.—May it please your Honours; We have two points to move in arrest of judgment, and humbly hope, that time will be allowed us for that purpose.

Chief Justice.—What are they? is the attorney-general apprized of them?

Mr. Pyke.—The first is, that the statute on which the indictment is framed is a local statute, and not in force in this province; the second, that the indictment does not state the prisoner to be a subject of our lord the king. The grounds have been mentioned to the attorney-general.

Chief Justice.—It rests then with the attorney-general. You have had time sufficient to prepare yourselves; but that may not be the case with the attorney-general:—If he is ready to oppose the motion, the Court are ready to hear it, otherwise it may stand over till Monday next.

Attorney General.—The points have been mentioned to me, I am ready to go upon the motion immediately.

Chief Justice.—Then go on.

Mr. Pyke.—May it please your Honours; We beg leave to move in arrest of judgment upon two grounds; first, because the statute of 25th Edward 3rd, upon which this indictment is grounded, is a local statute, confined to the realm of England, being made for the sole and express purpose of protecting the person of his majesty and his government at home, and does not extend to his majesty's colonies, or any of his foreign dominions, for, the words of the statute are, "when a man doth compass or imagine the death of our lord the king. If a man be adherent to the king's enemies *in the realm*, giving to them aid and comfort *in the realm* or elsewhere. If a man do levy war against our lord the king *in his realm*." By all which it clearly appears, from the express words of the statute, that it is confined to the realm of England: now by the realm of England is meant that part of Great Britain called England, and therefore this statute cannot be considered as in force in Canada.

The second ground is, because it is not stated in the indictment that the prisoner

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was a subject of our lord the king. This, may it please your honours, I conceive to be an essential part of an indictment for high treason; indeed, I consider it as its basis, without which it cannot stand; for it is a clear point that none but subjects owe allegiance, and consequently, none but subjects can be guilty of the crime of high treason, and therefore, unless we state the person accused, to be a subject, in the indictment, we cannot conclude *contra ligeantiae suae debitum*, because we have not first shown that he owed that allegiance; and this I conceive, is the reason why, in the case of De La Motte, who was a foreigner, the indictment stated him to be a subject of our lord the king. I therefore humbly submit these two objections to the consideration of your honours, and trust you will find them good and valid.

Mr. *Francklin*.—May it please your Honours; I rise to support the motion in arrest of judgment, and I think the grounds on which it is made, are sufficient, and will so appear to the Court. The first objection goes to destroy the base work of the whole proceedings; but should that not be found valid, we will then rest upon the second, which attacks what we conceive to be a fatal informality in the indictment. This is, I believe, the first instance, where a question respecting the law which ought to govern the present case, has been raised in order to make an object of legal discussion and decision in an English court of law in America; but though it has so happened, that no convictions have before taken place on the statute of the 25th Edward 3rd, cap. 2nd, the prisoner's counsel have not been the first to support the idea, that this statute does not extend to the province; it is a subject, which has been already canvassed extra-judicially, and opinions have been given upon it. If there is room for doubt, that is a sufficient reason why the question should now be determined by the Court, that the important law of high treason may be clearly settled. Our objection is, that the statute of the 25th Edward 3rd was local, operating in the realm of England only, and intended to punish offences of treason triable within the kingdoms, and that it was not therefore comprehended in the eleventh clause of the act of the 14th year of his present majesty's reign, cap. 83, commonly called the Quebec act, which introduced the criminal law of England into this province. The words of the statute of Edward 3rd, especially refer to the realm of England, and it being once, in Maurice Howard's case, made a question whether Ireland was to be considered as part of the realm of England, it was ruled that it did not form part of it. To have made the statute part of the criminal law of this province, I humbly contend the provincial legislature ought to have re-enacted it, as was done in Ireland by their parliament, and our courts should not have been left to consider by fiction, the province of Lower Canada,

as the realm of England in relation to offences committed within the province. It is a matter of that importance that demands the interference of our legislature. I submit the point with all due deference to the Court. I come now to the second ground of the motion in arrest of judgment, namely, the prisoner is not averred to be a subject of the king, which, I apprehend, was essentially necessary to make the indictment a good one. Persons living under the protection of our government, may be considered as falling under two descriptions, natural born and temporary subjects, both owing allegiance; but, the former a permanent allegiance, which he can never shake off. If the prisoner owed no allegiance during the time he remained in the province, certainly he would not have been called here to answer for the offence of which he has been convicted; but it was in consequence of his being a temporary subject, that allegiance was due from him, and the indictment should have averred him to be a subject of the king. In support of this doctrine I can appeal to the precedents of *Francia's* and *De la Motte's* cases, who were both aliens, but notwithstanding alleged to be subjects, in which light doubtless, they were considered *quoad* their residence, and the protection afforded them by the king's government under which they lived. In *Francia's* case, this notion was even carried too far; for, the indictment charged him with compassing the death of his natural lord the king, but his counsel took an exception, and I admit it was a valid one, for the allegation was contrary to fact, and all the writers say, these words will vitiate an indictment against an alien. Our exception is different from that which was made in the case last cited; but I think equally strong, for the indictment does not, on the face of it, show why the prisoner owed that allegiance, for the violation of which a verdict has been given against him. The counsel for the prosecution cannot then obtain a judgment against the prisoner, when they have no law to ground their proceedings upon; or, admitting they have, there is a fatal omission in their indictment. I humbly submit our motion in arrest of judgment to the Court, and am fully confident, that the arguments we have offered in support of it, will receive all the consideration they merit in favour of life.

Mr. *Attorney General*.—May it please your Honours; The grounds on which this motion in arrest of judgment is made, are these, That we have no law on which our indictment can be founded, and that not having averred the prisoner to be a subject of his majesty, at the time of the offence committed, the indictment itself, is essentially defective. The first of these objections appears to me very desperate; and were it not solemnly put in a case of life, I should not conceive it required an answer; but as it is, I am held to

offer to the consideration of the Court some arguments, which, I trust, will be satisfactory, from a conviction in my own mind, that they are well founded.

This is certainly the first trial for high treason, which has taken place in Canada, perhaps in America, if we except the shameful proceedings had in the year 1701, against colonel Nicholas Bayard* in the late province of New York; and even this is not a case similar to the present, as his indictment was drawn upon a local statute. I cannot, therefore, have recourse to precedents, but must argue from general principles.

The prisoner is charged with high treason, of two descriptions; compassing the king's death, and adhering to his enemies, both evidently taken from the English statute 25 Edward 3rd, c. 2, which is certainly the base of the indictment; for, unless it is supported by this statute, I do not hesitate to admit that it cannot be supported at all. But while I make this admission, I must observe, that I believe this to be the first instance of any doubts, public or private respecting the law of treason in Canada. The statute has uniformly been thought the law of the land. The total silence of our own provincial legislature upon the subject is a strong proof of the public opinion; for, it is scarcely to be supposed that, while we have enacted laws for the punishment of the lesser offences which are injurious to society, we should leave the great crime of high treason totally unthought of, and permit individuals to effect the very dissolution of society unpunished. I argue that the silence of the legislature can only proceed from a conviction, that the statute in question is undoubtedly in force, and sufficient for the protection of the government. Perhaps even my learned friends, to whom I am opposed, might, under other circumstances, coincide with me; but this is not now to be asked—and whatever may be the decision, they have done right in proposing the question. It is their duty to serve the prisoner to the utmost limits of his case, and they promote the public interest, by calling for a solemn decision upon the law of treason, which, above all others, ought to be clearly settled.

If I rightly comprehend them, they say, that the statute of Edward 3rd, is a local statute, confined in its operation to treasons committed within the realm of England; and therefore, admitting that the statute is introduced into this country, yet it has no effective operation; for, Canada is not a part of the realm of England. Now, to support this inference, it is necessary for them to prove that treasons, committed out of the realm of England, are not offences under this statute; for if they do not, and on the contrary such treasons can be shown to be offences within the pale of this statute, it is evident that it is not a local statute, confined in its operation

to treasons committed within the realm of England; but with respect to treasons committed without the realm, as the current of authorities is directly against them, they are totally silent, nor have they made any attempt to show, that by the decision of any Court in England, the limited construction for which they contend, has ever been put upon the statute. Certainly nothing that can support their argument is to be found upon the first branch (compassing the death of the king), the statute contains no restriction whatever: the words are these: "When a man doth compass or imagine the death of the king, or of our lady his queen, or of their eldest son and heir, he is guilty of treason"—where are the expressions limiting the operation of this clause in any respect? Words cannot be more general; they comprehend all acts of treason wherever committed. The decision of Crohagan's case is an authority directly to this point, and goes to prove the established maxim, that treason is not confined to time or place as all other crimes are; for Crohagan's declaration, that he would kill the king, was made at Lisbon. It is true, he afterwards came to England, but it was in prosecution of his original intention declared at Lisbon, which in fact was the treason for which he suffered. This first clause of the statute made no alteration in the law of England, it is merely declaratory of what had been the common law for centuries before;* and my lord Bacon, in his argument upon the case of the Postnati, says, "It is plain that if a subject of England had conspired the death of the king in *foreign* parts, it was by the common law of England treason." I shall not trouble your honours with any farther observations on this clause of the statute. I cannot conceive that any great expectations of success have been formed upon it. The other clause on which the second count of the indictment is drawn, is in these words: "If a man be adherent to the king's enemies, in his realm, giving them aid or comfort in the realm, or *elsewhere*, he is guilty of treason." From the obvious meaning of these words, to give aid or comfort to the king's enemies, in any part of the world, is treason; for otherwise the word "*elsewhere*" has no import whatever. The cases put by my lord Hale clearly show, that the construction of this clause is not confined to acts of adherence committed within the realm, but generally extends to all acts of adherence wherever committed. "If," says he, "there be a war between the king of England and France, and then a temporary peace is made, and within the time of that truce an Englishman goes into France and stays there, and returns before the truce expired, this is not an adherence to the enemy within the statute:" but he adds from the

* See the case of Bayard, *ant*, vol. 14, p. 471.

* Vide Eden's Principles of Penal Law, 119.

authority of the record from which he draws this opinion, that if the Englishman, during his stay in France, had confederated or conspired with the enemy, or assisted them, towards farther hostilities, that it would have been an adherence. He puts a second case: "If an Englishman," says he, "during a war between the king of England and France, be taken by the French, and there swears fealty to the king of France, if it be done voluntarily, it is an adherence." In both these cases the act which constitutes the treason is committed without the realm, yet both are put as instances of treason within the statute. Were it necessary to adduce farther authorities, the statute 35th of Henry 8th, cap. 2, might be cited. This act was made for the trial of treasons committed out of the king's dominions. "And in it," says my Lord Bacon, after putting the case of conspiring the death of the king abroad, "you shall find no words at all of making any new case of treason which was not treason before; but only of ordaining a form of trial." *Ergo*, "it was treason before." I might also refer to the statute 17 Geo. 3, c. 9, which was made for securing persons charged with the crime of high treason committed in America; but I shall not, for, I conceive, I have already fully established that the statute of Edward 3rd, is not a local statute confined to treasons committed within the realm of England: if it was so, I do not, I must confess, see the weight of the objection which has been made on this supposition; but as this objection is not founded in fact, it certainly requires no farther answer. It only remains for me to prove on this point, that the statute of Edward 3rd, forms a part of the law of Canada, and consequently, that the indictment is well supported by it. It is a general principle that the criminal law of the conqueror immediately takes place in all conquered countries. This, of itself, would be a sufficient proof that the statute is part of the laws of Canada; for, Canada being a conquered country, and the statute part of the criminal law of the conqueror, the conclusion is necessary and obvious. But, we have a complete answer to every thing which can be urged on this point in the words of the Quebec act, 14 Geo. 3, cap. 85. The eleventh clause of this act is in these words; "And whereas the certainty and lenity of the criminal law of England, and the benefits and advantages resulting from the use of it, have been sensibly felt, by the inhabitants from an experience of more than nine years, during which it has been uniformly administered: be it therefore enacted, that the same shall continue to be administered, and shall be observed as law in the province of Quebec, as well in the description and quality of the offence, as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted."—It is hardly possible to conceive words of greater latitude. Whatever is an offence

by the criminal law of England, becomes, by the operation of this statute, an offence by the criminal law of Canada; and if, by the laws of England, it is high treason to compass the death of the king, or to adhere to his enemies, whether the compassing or adherence be within the realm of England or without, the same offence, as well in the description as in the quality, is high treason in Canada.

I shall not presume to trouble the Court any farther upon this part of the motion in arrest of judgment. It is one of those points which require only to be fairly stated to produce conviction. The other objection is, that the indictment is defective, because it does not contain an averment that the prisoner at the time of the high treason by him committed, was one of his majesty's subjects. I certainly expected that some authorities would have been produced, to show that the words "a subject of our lord the king" are essential in indictments for treason. It is not usual on these occasions to throw the burthen of justification upon the officers of the crown, without producing some ground more solid than the opinion of the prisoner's counsel, which must of necessity be whatever promises the greatest advantage to their client—I looked for something more, and finding they are silent, I feel convinced that nothing can be produced; for, I am too well acquainted with the industry of the gentlemen concerned for the prisoner, to suppose that the fullest researches have not been made. They have indeed said, that the indictment against Francis Henry De la Motte contained an averment that he was a subject. This I readily grant, but it is no authority to prove, that these words were essential. Indictments in general contain much surplusage. Neither is it a case in point; for, it was not proved, nor was any attempt made upon the trial to prove that he was an alien. De la Motte, when judgment was given, stood before the Court as a British subject; for, as the contrary was not proved, the judges were bound to presume him such: and therefore there was not room for the question, whether the averment was right or wrong; and it was in fact perfectly consistent with the case as it then stood. The present question is plainly this,—whether, on the face of the indictment there is sufficient to warrant a judgment against the prisoner for high treason; for, if there is, the averment, "that he is a subject," is clearly superfluous. It may be as well to insert it where the truth of the case will permit it; but I have not a doubt upon the subject in the present instance; this being clearly the case of an alien, for which reason it was intentionally omitted, and by this omission we have saved an argument, which the gentlemen would otherwise have held, to convince your honours of the absurdity of averring an alien to be a British subject. As the case admitted of discussion, whether the

avermment was inserted or omitted, it was thought the safer course to leave it out, because the indictment contained sufficient to warrant the judgment without it. This is what I shall endeavour to establish; but before I proceed to remark on the several allegations of the indictment, the Court will permit me to observe and to produce some authorities to prove that the averment, "that the party is a subject," is an innovation upon the old form of indictments for high treason, and by whom this innovation has been introduced, or why it has been latterly adopted I cannot discover.

The course of ancient precedents ran in these words: "*Ut falsus proditor contra naturalem Dominum suum.*" This is evident from their inspection. I shall here cite a few, which are those of the king against Aylliffe,* against Horsley,† against Hayes,‡ against lord Delamere,§ and against Hampden;|| and to these I add the first count of lord Preston's indictment,¶ Rosewell's indictment,** and the indictments against Cranburne, Lowick, Rookwood†† and Charnock‡‡. These were all cases of subjects, and yet the indictments do not contain any positive averment that they were subjects; they aver only that the offences were committed by each of the parties "*Ut falsus proditor contra naturalem dominum suum.*" Now the words "*naturalem Dominum suum*" in the case of an alien, it has been long since settled must be omitted. My lord chief justice Holt in Cranbourn's case, says expressly, "No doubt it would be a fault to have put in *contra naturalem Dominum suum* where only a local allegiance is due."§§ This opinion is founded upon a solemn decision in Hilary 36 Eliz. when Stephano Ferrara de Gama and Emanuel Lewis Tinoco, two Portuguese by birth, came into England under the queen's safe conduct, and living there under her protection, joined with Dr. Lopez in treason against her majesty. They were detected and brought to trial; and in their case it was resolved by the judges, that their indictment ought to begin "That they intended treason *contra Dominam Reginam*, omitting these words *naturalem Dominam suam*, and ought to conclude, *contra ligeantiam sue debitum*,"||| in the present instance, knowing the prisoner to be an alien; this course has been pursued. This indictment avers that he committed the offence as a false traitor against his majesty, contrary to the duty of his allegiance, which is all that the case of De Gama requires: and

we have the opinion of my lord chief justice Holt explicitly declared in Cranburne's case, that this is sufficient; "for if it appear," says that great lawyer, "that he has committed an offence against the laws of the kingdom, and against the duty of his allegiance, which is high treason that is enough." Conformably to these authorities and the opinion of sir Michael Foster, to the same effect,† in the late cases (even of subjects), particularly that of lord George Gordon,‡ and the very case of De la Motte, which they cite, the words *naturalem Dominum* have been omitted. Since this omission, for what reason I cannot see, the averment, that the accused is a subject, has been generally inserted. I say generally, because it has not always been done; for, in an indictment preferred against a natural born subject, William Stone,§ in the King's-bench in England, for high-treason, in 1796, the second count does not contain either the averment that he was a subject, or the words *naturalem Dominum suum*, and yet, on that trial, on the part of the defendant, no exception was taken to the form of the indictment; on the contrary it was expressly admitted that the indictment was sufficient.

I have shown that the words *naturalem Dominum* must be omitted in the case of an alien; and it is certainly best to leave them out in all cases. I proceed to show why it is not necessary to insert an averment that the accused is a subject, and here I call upon my learned friends, to produce an authority, an opinion, a Dictum, which declares it necessary. I do not mean to say that if inserted it will certainly vitiate: I contend only that an indictment, in other respects well drawn, is sufficient without it. One of the strongest reasons in support of this opinion appears to me to be the general rule of the law, that every man must, *prima facie* be presumed a subject. This was stated by sir Bartholomew Shower, in Cranburne's case;|| and in the case of David Lindsay it was so ruled by the Court.¶ The latter is very strong; the indictment was founded on the statute of William and Mary, by which it was made high treason for any of the subjects of their majesties who went to France, to return into England without the royal licence. A motion was made after verdict in arrest of judgment, because the indictment did not aver that he was a subject when he went to France. But the Court observed, that this was not an objection which could avail, because they were bound to take him to be a natural subject unless the contrary appear, where is the necessity of averring what the Court must assume till the contrary appear? Do we, in indictments for any offence aver

* Trem. 2. † Trem. 4. ‡ Trem. 5.

§ *Ant2*, vol. 11, p. 594.

|| *Ant2*, vol. 11, p. 487.

¶ *Ant2*, vol. 12, p. 646.

** *Ant2*, vol. 10, p. 149.

†† *Ant2*, vol. 13, p. 159.

‡‡ *Ant2*, vol. 12, p. 1379.

§§ *Ant2*, vol. 13, p. 227.

||| *Ant2*, vol. 2, p. 617.

* *Ant2*, vol. 13, p. 227.

† *Fost.* 186.

‡ *Ant2*, vol. 21, p. 495.

§ *Ant2*, vol. 25, p. 1158.

|| *Ant2*, vol. 13, p. 227.

¶ *Ant2*, vol. 14, p. 1052, 1053.

that at the time it was committed, the accused was of sane mind? Assuredly we do not; and for the same reason the Court must presume him to be of sane mind, till the contrary is proved. There appears to be a strict analogy between the instances of alienage and insanity, in this particular and in other points; for insanity must be pleaded or given in evidence, and this is undoubtedly the rule with respect to alienage; for it is a fact within the knowledge of the accused, and the proof of it lies upon him.

A subject is defined to be "a member of the commonwealth." It may be well doubted whether an alien can possibly be brought within this definition: certain it is, there is wide scope for argument to prove that he cannot. I contend therefore, that it is safer to omit the assertion, and to support the indictment by other averments. In this case the indictment sets forth the offence itself strictly according to precedents, both ancient and modern, and avers that it was committed by the prisoner, late of the parish of Quebec, at the same parish of Quebec, a place within the king's dominions and within the jurisdiction of the court, as a false traitor against his majesty. It further states that he wholly withdrew the allegiance which he owed to our sovereign, and that the offence was committed by him traitorously against the form of the statute and against the duty of his allegiance. Surely this is enough, and particularly at this stage of the trial; for we must recollect that this is a motion after verdict, and I cannot but think, that very argument which the counsel for the prisoner have adopted proves, that the jury have even found the fact for which they contend, I mean that the prisoner was a subject of his majesty at the time of the offence committed, according to the very construction which they wish to put upon the word "subject." Their argument is this; "unless he is a subject, he cannot owe allegiance." If this be true, the converse must be equally true, that is, "If he owes allegiance, he must be a subject:" now what have the jury found? They have found that he owed allegiance, for they have expressly found "that he withdrew the allegiance which he, of right, ought to have borne towards our lord the king;" and they have also found that his offence was committed contrary to the duty of that allegiance which he owed to his majesty. They have therefore found him to be a subject; and this reasoning is certainly supported by what was said in Tucker's case, (lord Raymond, p. 1); for allegiance is there defined to be the mutual bond between the king and his subjects, by which the subjects owe duty to the king, and the king protection to his subjects. "And treason," said the judges, "is the breach and violation of that duty of allegiance which the subject owes to the king." The Court will permit me to repeat that the breach and violation of that duty of allegiance, which the prisoner owed

to his majesty in this case, is expressly found; and in this alone the jury have found the offence itself to be high treason, and the prisoner a traitor. But it is not upon this only that the case must rest, they have found more, they have found that the prisoner is of the parish of Quebec, that he committed his treason in that parish, that he has been guilty, *traitorously* guilty, of the whole charge, and that the offence which he committed is high treason within the statute of Edward 3rd.

May it please your honours; I might perhaps close the argument without farther observation; but one authority which I have cited, has struck me so forcibly, that I request to be indulged with your permission to repeat it. The jury have found the crime of which the prisoner is guilty to be high treason, and an offence which he has committed against the laws of the province, and against the duty of his allegiance. The words of my lord chief justice Holt, which I have already cited from Cranburne's case, are these: "If it appear that he has committed an offence against the laws of the kingdom and against the duty of his allegiance, which is high treason, that is enough."

Mr. Pyke.—May it please your honours: In reply to what has fallen from my learned friend, the attorney-general, in answer to the arguments used in support of the motion in arrest of judgment, I shall not take up much of the time of the Court, knowing that the objections which we have had the honour to offer, need only be fairly stated, and that the Court will give them that serious consideration which they may deserve.

And I must still contend upon the first ground, that, from the plain and natural construction of the words of the statute 25 Edward 3rd, it cannot be considered as extending to Canada, so as to make any attempt to subvert the government of this country, high treason under that statute.

Nor do I conceive that the Quebec act has had the effect to introduce the 25th of Edward 3rd into this country, but I humbly contend, that it was, and is, necessary to introduce it by a special act of the provincial parliament. And notwithstanding all that has fallen from the attorney-general, on the second ground of the motion in arrest of judgment, I am still of opinion, that it was essentially necessary that the indictment should have averred the prisoner to have been a subject; for there are two descriptions of subjects, the one natural born, and the other temporary; the prisoner at the bar certainly comes under the second class, and therefore, for the reasons which we have had the honour to state to the Court in the opening of this motion, I humbly conceive that the indictment not stating the prisoner to be a subject, must, on that account, be considered defective.

The Honourable Chief Justice Osgoode.—If I understand this motion rightly, it is *made*.

upon two grounds; the first that the statute of treasons is a local statute, and does not obtain in this province; and secondly, that the indictment does not state the prisoner to be a subject of our lord the king. With regard to the first objection, independently of the principle which some intelligent writers have advanced, that in conquered countries that are civilized, although the laws respecting property continue till varied by the conqueror, yet that the pleas of the crown or the criminal laws do *ipso facto* immediately attach. It is well known that, by an act of the British legislature, the criminal law of England is established in this province. The criminal law of England, as the criminal law of most countries, is general. Some statutes indeed are restricted to the realm, others to particular counties; and there never was a doubt, but that all the general statutes, up to the 14th of the king, are in force in this province. The question then arises, are the clauses of the 25th Edward 3rd, upon which this indictment is framed, penned in general terms? The first clause is, "If a man do compass or imagine the death of our lord the king." Words cannot be more general; for, here is no restriction or limitation, either of time or place. The second is, "if a man be adherent to the king's enemies in his realm giving them aid and comfort in the realm or elsewhere." This clause is studiously comprehensive, and certainly takes in this province. There can, therefore, be no question whether general clauses are to be deemed local. This is sufficiently apparent upon general reasoning; but added thereto, there are a number of cases in point, together with a parliamentary decision on the question, whether the statute of treasons is or is not confined to England? Cardinal Pole's case was a compassing in Italy; Dr. Storey's case, in the Low Countries; Crohagan's in Portugal, and Ebenezer Platt's case in America. To say that a man cannot compass the king's death in America, is to say that the operations of the mind are suspended in America; and to say that America is neither in the realm nor elsewhere, is an absurdity. Two several statutes, one in the 23rd, the other in the 25th year of Henry 8th, mentions treasons committed out of the realm of England; and without the king's dominions. There is clearly, therefore, no reason to arrest judgment on the first ground.

With regard to the second objection, that the indictment does not state the prisoner to be a subject of our lord the king, it may appear to come with a very bad grace, after the pains taken to prove him an alien. If it be a necessary averment to state that the prisoner is a subject, it must be necessary either as a matter of fact, or as a matter of fiction. As a matter of fact, it is contradicted by the evidence; and if it were necessary as a matter of fiction, you would not be at liberty to disprove it, for the reasons laid down by lord

Mansfield,* in the case of *Fabrigas and Mostyn*. But in Francis's case, who was an alien, he was stated in the indictment to be a subject, and evidence was allowed to be given that he was born at Bordeaux in France; and Mr. Hungerford, who was a very able lawyer, seemed to be perfectly satisfied that he should be able to arrest the judgment because that averment was made: and to day it is to be arrested because it was not made. In many of the old entries, as appears by the cases cited by Mr. Attorney-general, this averment is omitted. In modern precedents it has been inserted upon the principle, that while a person owes allegiance, whether lasting or temporary, he may be called a subject; but in the positive and absolute sense of the term it is a false fact, and according to Mr. Justice Foster the safer way is to omit them. The essence of an indictment for treason is this, that the crime committed is against the duty of the parties allegiance; for, as lord Holt observes in *Cranburne's case*, "if the crime be not against the duty of his allegiance, it cannot be high treason." The prisoner is charged in the indictment with having acted against his allegiance—that allegiance which he owed as being of the city of Quebec, in this province, merchant; for that is the addition by which he is designated in the indictment. The temporary and local allegiance to the supreme power, due by every sojourner, in every state, is a principle of general law. The commorancy averred in the indictment, is sufficient to show that he owed an allegiance; he is charged with having acted against that allegiance generally, without stating whether as sojourner or subject, the allegiance due being averred, the Court is of opinion that it is not necessary to make this indictment valid, that he should be charged as a subject, and that, as there is nothing in either objection, the motion in arrest of judgment must be over-ruled.

Clerk of the Arraignment.—David Mac Lane hold up your hand you have been indicted of felony and treason, have been arraigned and pleaded thereto Not Guilty, and for your trial have put yourself on God and the country, which country have found you guilty. What have you to say for yourself why the Court should not proceed to give judgment of death upon you according to law?

Prisoner.—I have nothing more to say.

Clerk of the Arraignment.—Cryer make proclamation.

Oyez! Oyez! Oyez! Their honours the king's justices do strictly charge and command all manner of persons to keep silence while sentence of death is passing against the prisoner at the bar, upon pain of imprisonment.

Chief Justice Osgoode.—David Mac Lane; you have been indicted for the crime of high treason, to which indictment you pleaded not guilty, and for your trial put yourself on God

* *And*, vol. 20, pp. 226, & seq.

and the country, by which country you have been found guilty. You have been tried by a respectable and intelligent jury, many of whom have heretofore served on the grand inquest. Your trial has been attended with such circumstances of fairness, openness and lenity, as do not obtain in any country upon earth, except where the laws of England prevail: More than twenty days have elapsed since you were acquainted with the particulars of the charge brought against you, and of the names of the witnesses to prove it, that you might not be surprised by a sudden accusation, and might have full time to prepare your defence. After the facts charged were fully established by the verdict, your counsel have been heard on every objection that could be brought to the regularity of the proceedings; whereas, had you been accused of the like crime, in that country whose government you would wish to impose on this province, instead of being allowed a period of twenty days, you might have been charged, convicted, and executed, in less than so many minutes, reflect, therefore whether you have not been guilty of a most unjust attempt against this government.

It appears in evidence that you are an alien to the king's government, notwithstanding which you have been treated with the same indulgence as though you had been a native subject. True it is, that a treaty of amity subsists between his majesty's subjects, and the citizens of the United States, many of whom have borne public testimony to the kindly offices received from the king's subjects. It is an intercourse we wish to cherish as well with public bodies as with individuals and as it is not probable that you personally have received an injury from this colony, you have been guilty of an unprovoked attempt against this government.

Having heard of some disturbances that were excited on account of the Road act, you falsely concluded that his majesty's Canadian subjects were disaffected to government, and ready to join in a rebellion, which you were willing to conduct. You might have known that it is easy to provoke murmurs on a like occasion in the best regulated states; in England similar discontents have taken place and subsided as in this country; for a short experience has convinced the people that the measure was greatly for their benefit. Putting conscience out of the question, as a prudent man, you had no grounds to go upon. No one, therefore, but a rash and unprincipled character would have engaged in so desperate an enterprise; and no one but a cruel and inhuman character would have projected such measures to carry it into execution. Consider then, whether you have not been guilty of a most atrocious and sanguinary attempt against this government.

Perhaps you may think these terms savour of a spirit of reproach; far from it: in your present condition, to betray such a temper were very unworthy. No;—they are uttered in

the spirit of admonition, and that upon this principle. You seem to possess a good understanding; I wish, therefore, to fasten on your mind the persuasion of this manifest truth, which nothing but the most perverse obstinacy can resist, namely, that though your designs were most hostile against this government, yet you have experienced that fair trial you would not have met with in any other government under Heaven; in hopes, that when the mist of delusion shall have disappeared, the conviction of one truth may prepare your mind for the admission of others, and finally produce that sense of contrition and remorse, which can alone expiate your dangerously wicked crimes. Had your traitorous project been carried into execution, who is there in this numerous audience that would not have felt the consequence among his friends and relations, or in his own person. But as it has pleased Providence to baffle your pernicious designs, I shall press this subject no farther. This government which you wished to overthrow, has, like all others, provided for its security against those who seek to destroy it. In the scrutiny of offences, it is more lenient than others, but is equally severe in the punishment. That punishment you have justly incurred, and it would be highly uncharitable to beguile you with the expectation that it will not be inflicted. Let me, therefore, most seriously exhort you to employ the short time you have to live, in submitting yourself with humiliation and repentance to the Supreme Ruler of all things, whose goodness is equal to his power, and who, though you suffer here, may admit you to his everlasting mercy hereafter. That such mercy may be your portion, is my most earnest prayer.

It remains that I should discharge the painful duty of pronouncing the sentence of the law, which is, "That you, David Mac Lane, be taken to the place from whence you came, and from thence you are to be drawn to the place of execution, where you must be hanged by the neck, but not till you are dead; for, you must be cut down alive and your bowels taken out and burnt before your face; then your head must be severed from your body, which must be divided into four parts, and your head and quarters be at the king's disposal; and the Lord have mercy on your soul."

The *Attorney General* moved, that a day should be fixed for the execution;—and the Court appointed Friday the 21st day of July instant.

This important trial commenced at seven o'clock in the morning, was concluded at nine in the evening, and was attended by the most numerous audience ever assembled in Quebec.

On Friday, the 21st of July, the prisoner, David Mac Lane, pursuant to his sentence,

was taken from the common gaol and placed upon a hurdle, which moved in slow solemnity towards the place of execution, attended by the sheriff and peace officers of the district, a military guard of fifty men and a great multitude of spectators. About a quarter after ten the hurdle drew up close to the gallows erected upon the *Glacis* without the garrison wall. As soon as it stopt, Maclane rose up, he was dressed in white linen grave cloaths, and wore a white cap on his head. The reverend Mr. Mountain and the reverend Mr. Sparks attended him, and with them he continued in fervent prayer for some minutes. He then informed the executioner that he was ready, and was by him directed to ascend the ladder which he immediately did.—But the executioner observing that he was too high, he descended a step or two, and then addressed the spectators in the following words, “this place gives me pleasure; I am now going where I have long wished to be, and you, who now see me, must all follow me in a short time, some of you perhaps in a few days; let this be a warning to you to prepare for your own deaths.” Then addressing him-

self to the military who were drawn up in a hollow square about the gallows, he added, “you, with arms in your hands, you are not secure here, even with your arms, I am going where I shall be secure without them.”

He immediately drew the cap over his face exclaiming “Oh God receive my soul! I long to be with my Jesus” and dropped his handkerchief as a signal for the executioner, who instantly turned him off.—He appeared to struggle with death but a short time.

The body hung for five and twenty minutes and was then cut down. A platform, with a raised block upon it, was brought near the gallows, and a fire was kindled for executing the remainder of the sentence. The head was cut off, and the executioner holding it up to public view proclaimed it “the head of a traitor.”—An incision was made below the breast and a part of the bowels taken out and burnt; the four quarters were marked with a knife, but were not divided from the body.

The whole of the execution took up about two hours, and the conduct of the unhappy sufferer was in every respect composed and becoming his situation.

628. Proceedings in the High Court of Justiciary at Edinburgh against ALISON DUNCAN, NEIL REIDPATH, and ROBERT MITCHELL, on an Indictment charging them with Mobbing and Rioting in resistance of the execution of the Militia Act, 11th and 12th of October: 37 GEORGE III. A. D. 1797.

Curia Justiciaria S. D. N. Regis tenta in Nova Sessionis Domo de Edinburgh, undecimo die Octobris millesimo septingentesimo et nonagesimo septimo, per honorabiles viros Robertum Mac Queen de Braxfield, Dominum Justiciarium Clericum, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinnan, Baronetum, et Davidem Smyth de Methven, Dominos Commissarios Justiciarum dicti S. D. N. Regis.

Curia legitime affirmata.

Intran,

Elizabeth or *Elly Duncan*, servant, or late servant to John Davidson, collier, in Elphinstone.

Neil Reidpath, servant, or late servant to George Dickson, tenant in Lampockwells, in the county of Haddington, and

Robert Mitchell, servant or late servant to Andrew Blair, corn-dealer, in Tranent, Panels.

INDICTED and accused at the instance of Robert Dundas, esquire, of Arniston, his majesty's advocate for his majesty's interest for

the crimes of mobbing, riot, and others in manner mentioned in the criminal libel raised thereanent, bearing

That whereas by the laws of this and of every other well-governed realm, mobbing and rioting, more especially with the intent and purpose of resisting and opposing the execution of a public law, and when accompanied with circumstances of great violence and outrage, are crimes of an heinous nature and severely punishable: Yet true it is and of verity, that the said David Duncan, Elizabeth or Elly Duncan, John Nicolson, Francis Wilson, Robert Mitchell, and Neil Reidpath, are all and each or one or other of them, guilty actors, or art and part of the aforesaid crime or crimes, in so far as on the twenty-ninth day of August one thousand seven hundred and ninety-seven, or on one or other of the days of that month, or of the month of July immediately preceding, or of September immediately following, David Anderson, esq. of Saint Germain, John Cadell, esq. of Cockenzie, Major Andrew Wight of Ormiston, and Andrew Gray, esq. of Southfield, all deputy lieutenants of the said county of Haddington, having met in the house of John Glen, inn-

keeper, in the village of Tranent, parish of Tranent, and county of Haddington aforesaid, in order to carry into execution an act of the thirty-seventh of George the third, cap. 103, intituled "An Act to raise and embody a Militia Force in that part of the Kingdom of Great Britain called Scotland," by receiving the lists from the different parishes of those liable to serve in the militia, and adjusting and amending the same in terms of the said statute: a number of riotous and disorderly persons, among whom were the said David Duncan, Elizabeth or Elly Duncan, John Nicolson, Francis Wilson, Robert Mitchell, and Neil Reidpath above complained on, or one or other of them, armed with great sticks, bludgeons and other offensive weapons, and assembled on the streets of the said village of Tranent: And while the before-named persons, deputy lieutenants of the said county of Haddington, were proceeding in discharge of their duty, and in terms of the said statute, to carry the same into effect, the said riotous and disorderly persons, among whom were the afore-named persons above complained on, or one or other of them, did thereupon beset the house of the said John Glen, where the said deputy lieutenants were so met, and did in the most riotous and outrageous manner, assault the said house with stones, by breaking the windows, and attempting forcibly to enter the same; to the great terror, annoyance, and danger of the said deputy lieutenants; one of whom, and who was also a justice of the peace, attempted in vain, and at different times, to read the act of George the first, commonly called the Riot act, but was prevented by the violence and outrageous proceedings of the said mob; and when the said deputy lieutenants went into the street to endeavour to preserve the peace, they were assaulted in a violent manner with sticks and stones, and otherwise maltreated and insulted by the said mob: In consequence of all which outrageous and violent proceedings, the said deputy lieutenants were at that time compelled to desist from the execution of their duty: And they the said deputy lieutenants, having, in consequence of what they had previously learned as to the intentions of the said mob, considered it absolutely necessary for their own safety, and for the support and protection of the law, to call in the aid of the military, then stationed at Haddington, being a detachment of the Cinque Port light dragoons, then under the command of captain David Finlay; also of a party of the Yeomanry Volunteer cavalry of the said county of Haddington, whom it was found afterwards necessary to reinforce by a detachment of the Pembroke-shire cavalry, under the command of captain John Price, from the troops then encamped at Musselburgh, the said riotous and disorderly, among whom were the afore-named persons above complained on, who took an active and leading share in the said riot, did then and there violently assault with

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stones, bludgeons, and other offensive weapons, the said military so assembled for protection of the said deputy lieutenants, and in support of the law, and did wound, and severely bruise, to the effusion of their blood, and imminent danger of their lives, several of the said military: And the said military having for a considerable time, and notwithstanding of the great violence of the said mob, endeavoured to persuade the said persons, thus riotously assembled, among whom were the afore-named persons above complained on, to desist from their violent and outrageous proceedings; they were at last in consequence of orders given them, by some one or other of the said deputy lieutenants and with a view to protect themselves as well as the said deputy lieutenants (who were in imminent danger of their lives) from the fury and violence of the said mob, compelled to resist force by force; in consequence of which, several of the said persons thus riotously assembled lost their lives, and others of them were severely wounded, all of which was occasioned by the violent and outrageous proceedings of the said mob, and in which the persons above complained on took an active and leading part: And the said David Duncan having, on the 31st day of August 1797, been brought before William Law, esq. sheriff substitute of the shire of Haddington, did in his presence emit and sign a declaration; And the said Elizabeth or Elly Duncan having, on the said 31st day of August 1797, been brought before George Buchan Hepburn, esq. of Smeaton, one of the justices of the peace for the county of Haddington, did in his presence emit a declaration which, as she said she could not write, was signed by the said George Buchan Hepburn: And the said John Nicolson, and Francis Wilson having, on the 1st day of September, 1797, been brought before the said George Buchan Hepburn, did in his presence emit and sign two separate declarations respectively: And the said Robert Mitchell and Neil Reidpath having, on the said 1st day of September, 1797, been brought before the right honourable the earl of Haddington, did in his presence emit and sign two separate declarations respectively. All which declarations above libelled, together with a paper addressed thus, "To the Honourable Gentlemen assembled at Tranent, for the purpose of raising six thousand Militia men in Scotland," and which appears to bear date the 29th of August, 1797, and has a number of subscriptions wrote in a circular manner annexed thereto: As also a letter bearing date St. Germans, Monday, half-past nine, (signed) "D. Anderson," and addressed, "Captain Finlay, or the Commanding officer, Haddington," will all be used in evidence against the said persons above complained on, and will for that purpose be lodged in due time in the hands of the clerk of the High Court of Justiciary, before which they are to be tried, that they may have an opportunity of seeing

the same. At least at time and place above libelled, the aforesaid riotous and outrageous proceedings took place, and the afore-named persons above complained on, or one or other of them, are guilty actors or art and part in the aforesaid crime or crimes; ALL WHICH, or part thereof being found proven by the verdict of an assize, before our lord justice general, lord justice clerk, and lords commissioners of judiciary, in a court of judiciary, to be holden by them within the criminal Court-house of Edinburgh, upon the ninth day of October next to come; the said persons above complained on, ought to be punished with the pains of law to deter others from committing the like crimes, in all time coming.

Follow the declarations of the panels libelled on.

In the petition for the procurator fiscal agent the riot at Tranent;

DECLARATION OF D. DUNCAN.

Haddington, 31 August, 1797.—Compared David Duncan, coalier in Penston, who being examined and interrogated, declares, that he was at Tranent on Wednesday last, by ten o'clock in the forenoon, for a pair of shoes to his wife. That he continued there till the riot began, and for a good while after. That he had a large stick in his hand. Acknowledges that when Mr. Cadell was reading, or attempting to read, the Riot act, at the house of John Glen, he the declarant threw a stone at the window, but which did not strike him, Mr. Cadell, though he intended that it should. Denies that he threw a stone at captain Finlay, or that he shook his stick at him, but acknowledges that he gave him bad names, and that he picked up a sword which fell from captain Finlay, and carried it into a house. Admits that he made a stroke at major Wight at Tranent, upon Tuesday last, when the said major Wight was endeavouring to apprehend him, and after he had knocked him, the declarant, down. Acknowledges that when major Wight was mentioning the intention of the meeting of the deputy lieutenants at the door of John Glen's house, the declarant interrupted him, and said, that they would have no militia, for that they never had a militia in Scotland. And declares all this is truth, and three words delete before signing. In witness whereof the declarant has subscribed this declaration, consisting of this and the preceding page, before Henry Davidson, writer, in Haddington, and Donald Mac Donald, residenter there.

(Signed) DAVID DUNCAN.

WILLIAM LAW.

HENRY DAVIDSON, *Witness.*

DONALD MACDONALD, *Witness.*

In the Precognition anent the Riot and Obstruction of the Militia Act at Tranent;

DECLARATION OF E. DUNCAN.

Haddington, August 31, 1797.—Appeared Elly Duncan, present prisoner in the Tolbooth of Haddington, who being examined, declares that she is servant to John Davidson, coalier in Elphinstown, and that she went to Tranent on Tuesday last about ten o'clock, being sent by her mistress to get some sarken cloth for her use, at Mr. Pringle's, shop-keeper at Tranent; that she did not call for the cloth at the shop, but she went to the street to look for her father; that when she first went to Tranent, she went to the house of Tibby Selkry, where she staid a considerable time, and that there were a great many people in the house, but she does not recollect any conversation; that she was afterwards taken prisoner by captain Finlay, and declares this is truth, and that she cannot write. This declaration was emitted before the under-subscribing justice of peace, and the following witnesses:

(Signed)

GEO. BUCHAN HEPBURN.

HENRY DAVIDSON, *Witness.*

DONALD M'DONALD, *Witness.*

In the Precognition anent the Riot and Obstruction of the Militia Act at Tranent;

DECLARATION OF J. NICOLSON.

Haddington, Sept. 1, 1797.—Compared John Nicolson, servant to Mr. Park, at Windymains, present prisoner in the Tolbooth of Haddington, who being examined and interrogated, declares that his name was upon Humble Kirk porch upon Sunday, as within the age of the statute, and he came to Tranent on the Tuesday, as he understood the order upon the said church required him to appear; that the mob was beginning when the declarant came in; that he saw a great part of the military at the east end of the town, and a few at the door of John Glen's; that he came so far down the town, and went into the house of James Irvine, cow-keeper, where he remained during all the time of the riot, and he heard the firing while there; that after the firing ceased, he left that house, and on his way home, he was taken prisoner by the military, about half a mile from Tranent; that he never looked out of the said house, during the time of the said riot. Declares that he had only a small walking stick in his hand. Declares that he never, during the whole course of the day, lifted or threw a single stone at the military, and adds that he is certain Irvine, his wife and daughter, and another woman, were in the house during the time of the riot; and can declare that the declarant was also there the whole time, and declares all this is truth.

(Signed)

JOHN NICOLSON;

GEO. BUCHAN HEPBURN.

HENRY DAVIDSON, *Witness.*

In the Petition or Precognition anent the Riot and Obstruction of the Militia Act at Tranent;

DECLARATION OF F. WILSON.

Haddington, Sept. 1, 1797.—Compeared Francis Wilson, merchant in Tranent, present prisoner in the Tolbooth of Haddington; who being examined and interrogated, declares, that he never was out of his house during the whole time of the riot at Tranent on Tuesday last; that he never attended any meeting antecedent to that riot; that on the Monday night previous to the riot, and after dark, he saw a drum beat through the streets, and followed by a considerable multitude; the drum as he thinks was beat by a man, but owing to the darkness of the night he cannot be certain, and indeed he was not anxious to see or have any intercourse with these people; that after the riot was over, an order was issued for every house door and window in Tranent to be shut, and the declarant was active in obeying it; that previous to this order, the following persons had taken refuge in the declarant's house, and he thought himself happy in having it in his power to keep them there, viz. William Reid, coallier; John King, coallier, in Penston; John Connel, coallier there; Mathew Smith, coallier there; James Henderson and Edward Henderson, both from Penston; William Donaldson, coallier at Fallside, and Francis Donaldson, also coallier from that place. And declares, that all these people came into his house an hour before the riot began, and remained there till taken out by captain Finlay and some of the military, after the riot was over; that the declarant was also taken prisoner by the military, and was found concealed in a closet, into which the anxiety of his wife had compelled him to go; that the declarant was informed yesterday by his brother, that a man from Ormiston, whose name his brother did not know, was seen during the time of the riot upon a house top, and that this man was dressed in green; declares, that after the declarant was taken prisoner, and placed along with the others, when captain Finlay asked his name, he answered that his name was Harry Dundas, and immediately after, when Mr. Cadell asked the same question, he, the declarant, told his real name; and declares all this is truth, three words delete before signing.

(Signed) FRANCIS WILSON.

GEO. BUCHAN HERBURN.

In the Precognition anent the Riot and Obstruction of the Militia Act at Tranent;

DECLARATION OF R. MITCHELL.

Haddington, Sept. 1, 1797.—In presence of the right hon. the earl of Haddington, appeared Robert Mitchell, present prisoner in the Tolbooth of Haddington, who, being examined, declares that he is servant to Andrew Blair, corn-dealer in Tranent; that last Tuesday his master sent him down to the house of John Glen, where the gentlemen were met, in order to show them that he was above the age ascertained by the act of parliament for the militia; that while he was in Glen's kitchen, the mob from without assaulted the house with stones, many of which came into the kitchen, and put the declarant in fear of his life; that the declarant then left Glen's house, and went into one on the opposite side of the street belonging to James Irvine, where he remained till the mob was over; that he found Irvine's wife and daughter in the house at the time, as also John Nicolson, present prisoner in the Tolbooth of Haddington; that he was in Irvine's house before the military began to fire, and the firing ceased before he left it. Declares that he had no stick in his hand that day; that he took no share in the mob; and in particular, that he never attempted to lift a stone that day. Declares, that a sword had been thrown into Irvine's house during the riot, which he afterwards understood belonged to captain Finlay; that captain Finlay himself came some time after to that house in search of his sword, which was delivered to him by Irvine's daughter, at which time he seeing the declarant sitting in the house, took him prisoner; and declares all this is truth.

(Signed) ROBERT MITCHELL.
HADDINGTON.

In the Precognition anent the Riot and Obstruction of the Militia Act at Tranent;

DECLARATION OF N. REIDPATH.

Haddington, Sept. 1, 1797.—In presence of the right hon. the earl of Haddington, appeared Neil Reidpath, present prisoner in the Tolbooth of Haddington; who, being examined, declares, that he is servant to Mr. Dickson, in Lempoch-wells; acknowledges that he went to Tranent on Tuesday last, in order to see the mob which was expected that day, as he had heard the night before at Pencaitland that there was to be a mob at Tranent next day; that the person who told him so was Thomas Middlemas, a fellow-servant of his, who said there would be a mob on account of giving up the names for the militia act. Declares, that Middlemas accompanied him to Tranent, and that they went away without asking liberty from their master; that they both had sticks in their hands, but that they were of a common size. Declares, that as soon as ever the mob began to throw stones, the declarant and other two persons ran down a close, and went into a house, where they staid about an hour; that he does not know the names of these two persons. Acknowledges upon recollection that the military had begun to fire before he ran down the close, and went into the house as above mentioned. Declares that

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he saw several women throwing stones that day, but did not observe any men throwing stones. Declares most solemnly that he threw no stones or sticks at the military or any other person that day. Declares that after the town began to turn quiet, he went away homewards, when he was overtaken by some soldiers about a mile to the southward of Tranent, who took him prisoner; and declares all this truth, one word delete before signing.

(Signed) NEIL REIDPATH.
HADDINGTON.

JOHN SOMERVAIL, *Witness*.
PETER WILLIAMS, *Witness*.
GEORGE CAWNS, *Witness*

And David Duncan, coalier, in Penston; Francis Wilson, merchant, in Tranent; and John Nicolson, servant to Archibald Park, at Windymains, also indicted in the said libel, being oftentimes called in court, and three times at the door of the court-house, by a macer of court, they failed to appear.

Whereupon, his majesty's advocate moved, that sentence of outlawry and fugitation might be pronounced against them, and that the bonds of caution granted for their appearance might be forfeited. The lord justice clerk, and lords commissioners of justiciary, discern and adjudge the said David Duncan, Francis Wilson, and John Nicolson, to be outlaws and fugitives from his majesty's laws, and ordain them to be put to his highnesses horn, and all their moveable goods and gear to be escheat and inbrought to his majesty's use, for their contempt and disobedience in not appearing this day and place, in the hour of cause, to have underlyen the law for the crimes of mobbing and riot, and others as specified in the said criminal libel raised against them thereanent, as they who were lawfully cited to that effect, and oftentimes called in court, and three times at the door of the court-house, and failing to appear as said is; and further the said lords declare the bonds of caution granted for the appearance of the said persons to be forfeited, and ordain the penalties therein contained to be recovered by the clerk of this court, to be disposed of as the Court shall direct.

(Signed) ROBERT M'QUEEN, J. P. D.

The libel being read over to the panels in open court, and they being severally interrogated thereupon, they all answered not guilty.

Procurators for the Prosecution.—Robert Dundas, esq. of Arniston, his Majesty's Advocate [afterwards Lord Chief Baron of the Exchequer]; Mr. Robert Blair, Advocate, his Majesty's Solicitor General [afterwards Lord President of the Court of Session]; Mr. John Burnett, Advocate.

Procurators for the Panels.—Mr. John Clerk, Mr. Walter Scott, Mr. H. D. Inglis, Mr. James L'Amy, Advocates.

L'Amy, for Elizabeth or Elly Duncan, represented that she cannot go to trial on the present libel, because that is not her name; that the name of the person now at the bar is Alison Duncan;* and he produced in evidence of this a certificate of her baptism where she is called Alison; and farther, that he is ready to prove by the session clerk now present in court, and ready to produce the record, so her name cannot in any shape be brought to answer to the name given to her in the libel; that this is unquestionably a relevant defence against any proceedings being had upon the present libel against the person at the bar, and therefore craved that she be dismissed.

Advocate, answered, that the person now at the bar, calling herself Alison Duncan, gave up her name to be Elly Duncan; and she is so named in her declaration, when examined, and therefore he submitted how far she might not be tried under the name and designation given her in the libel.

Hugh Ramsay, the session clerk being called, upon, was examined upon oath; and produced the record of baptisms, for the parish of Gladsmair. Whereupon the Court pronounced the following interlocutor:

The lord justice clerk, and lords commissioners of justiciary, having considered what is before represented, with the deposition of the session clerk, and certificate and record produced; they sustain the objection for the said Alison Duncan, and dismiss her from the bar.

(Signed) ROBERT M'QUEEN, J. P. D.

Clerk, for the panel Mitchell, represented, that he had no objections to offer to the relevancy of the libel.—That he denied that his client had any accession to the riot libelled. That he attended at Tranent on the 29th of August last, for the purpose of getting his name struck out of the list made up by the schoolmaster, as he was above the age specified in the militia act, a certificate of which he carried along with him; and remained in the house where the deputy lieutenants were, till he was driven out by the violence of the mob, when he went into a house opposite, and remained there till the mob had ceased.

Scott, for the panel Reidpath, represented that he did not mean to object to the relevancy of the libel.—That his client had gone to Tranent, on the day libelled for the purpose of getting his name struck out of the militia list, as he was above the age; but had no concern whatever with the disgraceful proceedings of the mob there assembled.

The lord justice clerk, and lords commissioners of justiciary, having considered the criminal libel raised and pursued at the in-

* See the case of Fyshe Palmer, *antè*, vol. 23, pp. 244, *et seq.* and Hume's Comm. there cited. See also Mr. Hume's Supplemental Notes, Numbers 206, 207, and 208.

stance of his majesty's advocate, for his majesty's interest, against Robert Mitchell and Neil Reidpath, panels; they find the libel relevant to infer the pains of law; but allow the panels, and each of them, to prove all facts and circumstances that may tend to exculpate them, or either of them, or alleviate their guilt: and remit the panels with the libel as found relevant, to the knowledge of an assize. (Signed.) ROBERT M'QUEEN, J. P. D.

The following persons were then named to pass upon the assize of the panels.

Robert Norrie, painter in Edinburgh.
William Lane, upholsterer there.
William Cooper, upholsterer there.
William Fettes, merchant there.
John Milne, founder there.
James Milne, tanner there.
James Watson, painter there.
Walter Brunton, saddler there.
Francis Shields, baker there.
James Cooper, merchant there.
Kenneth M'Kensie, apothecary there.
William Allan, merchant there.
James Inglis, merchant there.
John Deas Thomson, insurance-broker there.
Adam Freer, merchant there.

Who were all lawfully sworn, and no objection on the contrary.

The procurators for the prosecutor proceeded to adduce the following witnesses in proof of the libel; who being all lawfully sworn, purged of malice and partial counsel, emitted their depositions *vis à voce*, in presence of the Court and Jury without being reduced into writing, in terms of the statute.

1. David Anderson, esq. of St. Germain's.
2. John Cadell, esq. of Cockenzie.
3. Major Andrew Wight, residing at Ormiston in the county of Haddington.
4. Captain David Finlay, of the Cinque Port Light Dragoons.
5. Captain John Price of the Pembroke cavalry.
6. George Steil, slater in Tranent.
7. John Glen, vintner there.
8. Michael Bingham, of the Cinque Port cavalry.
9. William Scales, of the Cinque Port cavalry.
10. John Rawlins, of the Cinque Port cavalry.
11. James German, of the Cinque Port cavalry.
12. Edmund Collart, of the Cinque Port cavalry.
13. William Wilson, coalier at Penston.

The prosecutor being about to adduce evidence for proving the declarations of the panels libelled on, the counsel for the panels judicially admitted that these declarations were emitted by the panels voluntarily and freely, of the dates they bear, and that they were then sober, and in their sound senses.

JOHN CLERK.

WALTER SCOTT.

ROBERT M'QUEEN, J. P. D.

The declarations libelled on were then read over in open court.

Whereupon, his majesty's advocate declared the evidence in proof of the libel concluded; and the procurator for the panel Robert Mitchell, adduced the following witnesses in exculpation of the said Robert Mitchell.

1. Andrew Blair, corn-dealer in Tranent.
2. Mrs. Blair, wife of the said Andrew Blair.
3. John Barclay, servant to George Tod at Ormiston.

4. Miss Glen, daughter of John Glen, a witness for the prosecutor.

5. Peter Scott, wright in Tranent.

Whereupon the procurator for the said Robert Mitchell declared his evidence in exculpation closed.—And the procurators for the panel Neil Reidpath adduced the following witnesses in exculpation of the said Neil Reidpath.

1. George Dickson, tenant in Lampockwells, in the county of Haddington.
2. David Brotherstones, servant to William Hunter, brewer in Pencaitland.

It being observed by the Court that the said David Brotherstones had been guilty of concealing the truth upon oath.—Therefore the said lords ordain him to be carried to the Tolbooth of Edinburgh; therein to be detained till Friday next, at ten o'clock forenoon, and then to be set at liberty.

(Signed) ROBERT M'QUEEN, J. P. D.

3. David Williamson, tenant in Fallside.

4. John Brown, tenant in Millhill.

The two following witnesses were adduced in farther exculpation of the panel Robert Mitchell.

Jean Irving, daughter of James Irving, cow-feeder in Tranent.

Jean Neil, spouse of James Home, labourer in Tranent.

Mrs. Irving, wife of James Irving, cow-feeder in Tranent.

Whereupon the procurators for the panels declared their evidence in exculpation to be concluded.

The evidence was then summed up, on the part of the prosecution, by his majesty's advocate, on the part of the panel Reidpath by Walter Scott, advocate, on the part of the panel Mitchell by Mr. John Clerk, advocate, and lastly by the lord justice clerk.

The lord justice clerk, and lords commissioners of justiciary, ordain the assize instantly to inclose in this place, and to return their verdict in the same place, to-morrow, at twelve o'clock noon; continue the diet against the panels, and whole other diets of court, till that time, and ordain the hail fifteen assizers and all concerned then to attend, each under the pains of law; and ordain the panels in the mean time to be carried to the Tolbooth of Edinburgh.

(Signed) ROBERT M'QUEEN, J. P. D.

Curia Justiciaria, S. D. N. Regis tentis in Nova Sessionis Domo de Edinburgh, duodecimo die Octobris, millesimo septingentesimo et nonagesimo septimo.—Per honorabiles viros, Robertum M^cQueen de Braxfield, Dominum Justiciarium Clericum, Joannem Swinton de Swinton, Dominum Gulielmum Nairne de Dunsinnan, Baronetum, et Davidem Smyth de Methven, Dominos Commissionarios Justiciarum dicti S. D. N. Regis.

Curia legitime affirmata.

Intran,

Neil Reidpath, servant or late servant to George Dickson, tenant in Lampockwells, in the county of Haddington, and

Robert Mitchell, servant or late servant to Andrew Blair, corn-dealer in Tranent, Panels.

Indicted and accused as in the preceding sederunt.

The persons who passed upon the assize of the panels, returned the following verdict.

*At Edinburgh, the 11th day
of October in the year
1797 :*

The above assize having inclosed, made choice of the said William Fettes to be their chancellor, and of the said John Deas Thomson to be their clerk, and having considered

the criminal libel raised and pursued at the instance of his majesty's advocate, for his majesty's interest, against Neil Reidpath and Robert Mitchell, Panels; the interlocutor of relevancy pronounced thereon by the Court; the evidence adduced in proof of the indictment; and the evidence adduced in exculpation;—They all, in one voice, find the libel not proven. In witness whereof their said chancellor and clerk, have subscribed these presents, consisting of this and the preceding page, in their names, and by their appointment, place and date aforesaid.

(Signed)

W. FETTES, Chancellor.
J. D. THOMSON, Clerk.

The lord justice clerk, and lords commissioners of justiciary, in respect of the foregoing verdict, assolvize the panels *simpliciter*, and dismiss them from the bar.

(Signed)

ROBERT M^cQUEEN, J. P. D.*

There are various other indictments on record, for riots in opposition to the militia laws: Some of them stronger cases than the present, followed by convictions. But they are not of sufficient importance or interest to be here inserted.

* See in this Volume, the case of Cameron and Menzies, A. D. 1798.

624. Proceedings on the Trial of JAMES DUNN for Conspiring to Murder the Right Honourable Henry Lawes Luttrell, Earl of Carhampton; tried before the Court holden under a Commission of Oyer and Terminer at Dublin, on Monday October 23rd: 37 GEORGE III. A. D. 1797.*

COMMISSION.

Monday, October 23rd, 1797.

Judges.—The hon. Robert Boyd, and hon. William Downes, two of the Justices of his Majesty's Court of King's-bench.

The grand jury of the city of Dublin having at the last commission found the following bill of indictment, the persons therein named, were then arraigned :—

County of the city of } THE jurors of our lord
Dublin to wit } the king upon their oath present, that James Dunn, Maurice Dunn, Patrick Carty, Peter Reily, Edward Martin, John Broderick, William Carriage, Michael Farrell, Thomas Bourke, James Fairweather, John Taaffe, Mathew Lawler, Patrick Hickey,

* Reported by William Ridgeway, esq. barrister at law.

James Bacon, George Ryan, William Darcey, Garrett Byrne, Thomas Byrne, John Farrell, Patrick O'Neil, John Whelan, and Miles Dignan, being evil, wicked disposed and designing persons, on the 7th day of May, in the 37th year, &c. at Strand-street, &c. wickedly, wilfully, maliciously and feloniously did conspire, confederate, and agree together, and to and with each other, wilfully, feloniously, and of their malice prepensed to kill and murder Henry Lawes Luttrell, earl Carhampton, then and there being a true and faithful subject of our said lord the king, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.

The prisoners severally pleaded, not guilty, and being this day brought up for trial, were asked, Whether they would join in their challenges?—Answered in the negative:—Whereupon James Dunn was put upon his trial alone.

Counsel for the Crown.—The Attorney General [The Right Hon. Arthur Wolfe, afterwards Viscount Kilwarden, and Lord Chief Justice of the Court of King's-bench.]

The Prime Serjeant [James Fitzgerald.]

The Solicitor General [John Toler, afterwards lord Norbury and Lord Chief Justice of the Court of Common Pleas]. Mr. J. S. Townsend, Mr. Ridgeway, Mr. Mackenna.

Agent.—Mr. Kemmis.

Counsel for the Prisoner.—Mr. Curran [afterwards Master of the Rolls.] Mr. Macnally, Mr. Jonas Greene, Mr. Emmett.

Agent.—Mr. Dowling.

The sheriffs returned the panel, which was called over, and the jury sworn, in the following order :

Richard Manders, merchant, challenged peremptorily by the prisoner.

Patrick Bride, esq. sworn.

William Thompson, esq. challenged peremptorily by the prisoner.

George Carleton, merchant, sworn.

William Lindsay, merchant, challenged peremptorily by the prisoner.

James Blacker, merchant, sworn.

Samuel Rosborough, merchant, challenged peremptorily by the prisoner.

Richard Wilson, merchant, same.

William French, esq. sworn.

Drury Jones, merchant, challenged peremptorily by the prisoner.

William Duncan, merchant, sworn.

Oliver O'Hara, merchant, set by on the part of the crown.

William Bean, merchant, sworn.

Edmond Nugent, challenged peremptorily by the prisoner.

Mark Roberts, merchant, same.

Patrick Ewing, merchant, set by on the part of the crown.

Daniel Maguire, merchant, same.

William Tenant, merchant, sworn.

J. Fitzgerald, merchant, challenged peremptorily by the prisoner.

John Lyons, merchant, same.

Lewis Hodgson, merchant, sworn.

James King, merchant, challenged peremptorily by the prisoner.

Thomas Prentice, merchant, set by on the part of the crown.

Meade Nesbitt, esq. challenged peremptorily by the prisoner.

Robert Burton, esq. sworn.

George Simpson, merchant, sworn.

—Saundford, esq. challenged peremptorily by the prisoner.

Peter Roe, merchant, set by on the part of the crown.

Thomas Kellet, merchant, challenged peremptorily by the prisoner.

William Howard, merchant, same.

William Lancake, merchant, same.

Ambrose Leet, esq. same.

Cornelius Gautier, merchant, sworn.

George Rafferty, merchant, challenged peremptorily by the prisoner.

William Humphries, merchant, set by on the part of the crown.

Samuel Smith, merchant, same.

F. J. Brady, merchant, same.

George Rawdon, merchant, same.

Joshua Manders, merchant, challenged peremptorily by the prisoner.

The panel being gone through, the clerk of the crown called the first person set aside on the part of the crown.

Oliver O'Hara, sworn.

THE JURY.

Patrick Bride,	William Tenant,
George Carleton,	Lewis Hodgson,
James Blacker,	Robert Burton,
William French,	George Simpson,
William Duncan,	Cornelius Gautier,
William Bean,	Oliver O'Hara.

To whom the prisoner was given in charge.

Mr. M'Kenna opened the indictment.

Mr. Attorney General.—My Lords, and Gentlemen of the Jury;—I am directed officially, on the part of the crown, to prosecute the prisoner at the bar. I should not, in a case in which the prisoner is not entitled to the same privilege by his counsel, trouble the Court with any statement, were not the case of so much importance to the morals of the people, the good order of society, and the public peace. I shall confine myself to the leading circumstances of the case, wishing to disclose to the world the situation in which this conspiracy, prevailing in this country, attempts to place the social order of the country.—Hoping that if what I state shall appear in evidence, it may have this effect upon all who shall become acquainted with the circumstances—this salutary effect—that they may see the fatal and horrible length, to which delusion may bring them; and that men may know that when they enter into those societies, they expose themselves to crimes of the most horrid and atrocious nature.

Gentlemen, the prisoner at the bar stands indicted for conspiring and confederating with others to take away the life of the earl of Carhampton, which offence by the law of this country is now a capital felony. It is fit I should inform you as shortly as may be, how that crime came to be a capital felony—not that you or the Court have any thing to do with the policy of the law—It exists, and you are to inquire whether the prisoner be guilty of the fact charged upon him, and the judges are to execute the law, if the prisoner be found guilty.—By the law of England, in early times, it was a capital offence, to compass and imagine the death of any man, a subject, or the king; but in more modern times the fact of murder alone was considered capital, and the crime of compassing the death was capital

only in the case of the king, on account of the interest which society has in his life. With regard to a subject, the compassing of his death became a misdemeanor merely.—The legislature did not see a necessity to increase the punishment.—The crime was scarcely ever committed, and seldom even suggested itself to the imagination of men. It was not till of late—of very modern days—till the foundation of that system which rages through the country—when the nation was disgraced by the frequent conspiracies to murder, that the legislature finding the crime prevail, permitted a bill to be introduced for the purpose of making that crime a felony of death. That bill three years since passed through two stages in the House of Commons—and then trusting that an impression would be made by what had passed there, such was the moderation of the legislature, that they adjourned the consideration of the bill to a distant day, and it did not pass in that session. Unhappily, the expectation entertained proved groundless;—the crime became more prevalent, and two years after, the legislature was compelled to pass a law making conspiracy felony of death. Gentlemen, to state what the crime is must be sufficient to show that no punishment is too severe. The crime must be this:—Two persons at least deliberately agree upon the *murder* of another. The mind must approve putting out of society for ever, the man capable of such a crime.

But, gentlemen, that is not for your consideration. All you have to inquire is, whether James Dunn, the prisoner at the bar, did conspire with any of the persons named in the indictment to take away the life of the earl of Carhampton.

I will now state as briefly as I can, the evidence that is to be laid before you.—It will appear, that there was, in the city of Dublin, a society, known by the appellation of “United Irishmen.”—That society is divided into a vast number of societies, connected with each other progressively by Baronial Committees, Provincial and National Committees.—What may be the professed objects of the society, it is not for me to state. But it will appear by the trial of this day, if I am rightly instructed, that those objects are attempted to be obtained, by murder and deliberate assassination—assassination, not casually to be committed by individuals of the society—not perpetrated through the mistaken zeal of an individual—but it will appear, that those assassins come out of the society itself and are supported by the pay of the society, even to their protection if brought to trial.

Gentlemen, if I am rightly instructed, it will appear, that the assassination intended in this case, was promoted by a society of United Irishmen, which agreed to pay with Baronial money, the persons who should commit the assassination.

Gentlemen, I hope I may be pardoned—I do not state these circumstances to make an

impression upon your minds—I do it, in perhaps the mistaken, but certainly the anxious hope, that the knowledge of these facts may produce an effect upon those who have been deluded hitherto, and upon those upon whom delusion may hereafter be attempted.—That while they are told they are only to assist to bring about some constitutional improvement, men may know they are enlisted to commit crimes the most disgraceful to human nature—that they may learn that the sixpences they contribute to the common fund may be the wages of assassination, perhaps of their best friends and patrons, discharging the duties of the stations in which they are placed.

Gentlemen, it will appear, that in one of those societies, which assembled in this city upon the 7th of May last, in the morning, the prisoner at the bar, of the name of James Dunn, a blacksmith and farrier in the service of lord Carhampton, resident at his gate at Luttrellstown in the county of Dublin, came to the society, got himself introduced, at the instance of the man of the house where the society was assembled, and did deliberately propose to assist their cause by taking away the life of the earl of Carhampton. Previous to his being received to make this proposition, he was called upon to show he was an United Irishman, which he did by the signs known among them:—thus accredited he made his proposition—the society acceded to it:—he was asked, who could assist him:—he said, there were many to stand by him, but there were three or four, upon whom he could particularly rely. He was desired to come again in the evening—where he would meet the same persons, and to bring with him the persons he mentioned.—He did accordingly come.—But the society conceiving, that the assembling of sixteen persons, together with the assassins, might excite some suspicion, appointed a *committee of assassination*, consisting of seven members, who were to concert the business with Dunn and his party. Thus sixteen men, assembled upon a Sunday morning, unheated by liquor, unprovoked by passion or injury, do hear proposed from a member of their society, a scheme to murder the earl of Carhampton, they take an oath to keep secret and to effect the plan, and they appoint a committee of assassination to execute their horrid purpose.

It will appear, that in the evening, Dunn came, with three others, whose names are mentioned in the indictment—that in the evening, the committee of assassination sat—they examine Dunn and his associates, where they lived, and who they were; and such inquiry was made, and such answers given as to satisfy the committee, that they were persons to be relied upon in the work they were to undertake. A scheme was proposed by the prisoner at the bar for the purpose of carrying their design into effect—that scheme was disapproved of, and a member proposed another, which with some variation was adopted. The

committee adjourned with an intention, that this scheme should be executed upon the ensuing Sunday.

Lord Carhampton had made it a practice, when the duties of his office permitted him, to go to his seat at Luttrellstown upon Sundays; and it will appear that by the plan agreed upon, Dunn and the others of the committee were to get horses, and upon Sunday overtake his lordship's carriage, and discharge blunderbusses into it from the rear, while others were to get forward, discharge pistols into the side windows, and to such lengths did their diabolical purpose carry them, that they determined to put to death the unoffending postilion, and the other servant attending the carriage, and his lordship's aid-de-camp, should he accompany him.

It occurred however to some of the committee to be necessary to procure a sum of money to enable them to provide horses, and weapons. For that purpose they apply to the secretary and treasurer for a sum of money—of ten or twelve guineas, which it seems they thought sufficient to provide them with means of putting to death the earl of Carhampton and his attendants; and this money was to be supplied from a fund raised by the small contributions of the members of the various societies.

The secretary of the Baronial Committee, it seems, did not think himself warranted to advance the money, and it became necessary to make an application to the secretary of finance:—Bourke was therefore applied to; he was foreman to Mr. Miles Dignan of Grafton-street, and he said, that the thing must be postponed, until Mr. O'Callaghan, who was at head of the finance, should recover. Bourke was one of the sixteen at the first meeting, and though he mentioned that the matter must be postponed for the reason he stated, yet he recommended strongly, as more advisable, to execute the plan immediately, saying that he entertained no doubt that the money would be had afterwards.

Gentlemen, this plan was to have been carried into execution upon the 14th of May; but the means not being had, Dunn came to town that day, attended by Carty and others his companions, to deliberate with the committee of assassination; and upon his return home, he, together with Carty, was arrested.

Gentlemen, I do not take up your time with a more minute detail of the particulars. The chairman of the committee, James Ferris, had, previous to the meeting of the 7th of May, seeing the dangerous tendency of the society, informed lord Carhampton of its views; and lord Carhampton recommended to him not then to quit the society, for he might make discoveries useful to the state. Afterwards this proposition to murder the earl of Carhampton was made, which Ferris immediately disclosed.

If, gentlemen, this outline of the facts be proved, you can have no hesitation in finding

the prisoner guilty. These facts are confirmed from the mouth of the prisoner. After he was apprehended, he did, in a conversation, where neither hopes nor fears were excited to influence his mind, admit to lord Carhampton, that he had entered into the conspiracy, and had determined to take away his life:—He did, as it were enthusiastically, admit and glory in every thing he had determined to do; acknowledging at the same time, that he had not received any injury from the earl of Carhampton. The particulars which passed, I would rather you should hear from the witnesses, than from me.

The next day after he had this conversation, lords Carhampton and Enniskillen, accompanied by captain Eustace, saw the prisoner.—He had an opportunity of considering his situation: he did then declare his guilt—averring, that as lord Carhampton was at the head of a party, and that it would benefit the cause in which he, the prisoner was engaged, he resolved to put his lordship out of the way.

This, gentlemen, is the outline of the case; you will hear the witnesses detail it more particularly. If the prisoner be innocent, you will have pleasure in acquitting him. But if he be guilty, you have an important duty to perform, to find a verdict that will, by deterring others, preserve the lives of many of your fellow-creatures.

I hope the audience now assembled, and others who may hear of this trial, will reflect upon the situation in which these societies place the persons who enter them; that when they are contributing the produce of their industry, into the funds of these associations, they do it for the hire of assassins, whose daggers are pointed at their best protector, as in the present case lord Carhampton was to fall by the hand of his servant, merely because he had discharged the duties, with which he was entrusted, as a magistrate and a general officer. The only reason which these conspirators had for putting the earl of Carhampton to death was, that he had with an activity, zeal, and ability unexampled, exerted himself to suppress insurrection, and to restore the peace of his country.*

James Ferris sworn.—Examined by Mr. Prime Serjeant.

Do you know a person of the name of James Dunn?—I have seen him.

Point him out to the jury?—There he is [pointing to the prisoner.]

Do you recollect the 7th of May last?—Am I at liberty to recur to notes to assist my memory?

Mr. M'Nally for the prisoner.

When did you take these notes?—A day or two after.

* As to this, see 2 Plowden's Historical Review of the State of Ireland, p. 537.

Did you take them all at one time?—No, because there were different times.

Court.—Do you mean to say, that you made those notes after each particular transaction?—Just so, my lord.

Mr. M^cNally.—On your oath, have you revised or embellished those notes at any subsequent time?—I have.

Then these are not the very notes which you first took down, but have been revised, embellished, diminished, and increased for the purpose of refreshing your memory?—They are the same in effect.

Mr. M^cNally.—My lords, I submit, that these notes cannot be made use of.

Mr. Justice Boyd.—State what you can from your recollection, and you may recur to the notes afterwards, if necessary.

Mr. Prime Serjeant.—Did you see the prisoner upon the day I mentioned, the 7th of May?—I did.

Where?—In Strand-street.

That is in the county of the city of Dublin?—I believe it is.

Had you any acquaintance with him before that day?—I never saw him before in my life.

Were you in the discharge of any duty that day?—I was chairman of a meeting that day.

Where?—In the house of Maurice Dunn, in Strand-street.

There you saw the prisoner?—It was.

Was he introduced by any person?—He was.

By whom?—By Maurice Dunn, the man of the house.

You were in the room, and were called out?—I was, by Maurice Dunn.

Who then introduced the prisoner to you?—He did.

As near as you can recollect, state what passed between you and the prisoner upon that occasion?—After Maurice Dunn had introduced the prisoner to me—Am I at liberty to state what Maurice Dunn said?

Mr. Prime Serjeant.—Yes, if the prisoner James Dunn were present?—Maurice Dunn, addressing himself to me, said, "This is a particular friend of mine; he has something for the good of the cause to tell"—I think these were his words—or "communicate"—I do not exactly recollect which—"Go aside there both of you, and talk together"—and says Maurice Dunn to James Dunn "You may tell him" (meaning me) "your mind"—Maurice Dunn then left us, and we went and sat down together in one of the seats of Maurice Dunn's tap-room—he keeps a public-house.

About what hour of the day was this?—Between eight and nine in the morning to the best of my recollection.

You sat down in the tap-room?—I sat in one of the seats.

Was there any other person there?—I do not recollect there was: it was rather early in the morning.

What passed?—Says James Dunn, "I understand you are head of the meeting within." I told him I was chairman.

What reply did he make?—"So the man of the house was telling me, he is a name-sake and relation of mine."

Well, sir?—"How do matters go on?" The answer I made him was, "swimmingly"—to the best of my recollection.

Well, sir?—"We hear down our side, that Carhampton is a great eye-sore to matters."

Court.—Who said that?—The prisoner, James Dunn, my lord.

Mr. Prime Serjeant.—Well, sir?—"We hear that he is taking up people, and sending them on board every day." "So I hear"—was my answer.—"There are a few friends of us; a few more and I, who were putting our heads together about doing him out."

Who said that?—James Dunn, the prisoner at the bar.

What more?—"We had a notion of doing him out in the demesne, but then we are so well known in the place, that I thought as how it was better to defer it"—or—"refer it," I cannot exactly say which—"until I came into town and consulted with some of the city committee about it; and so I came in purposely about it. I was telling the man of the house about it—He was telling me of the meeting here, and he said, he would tell you of it himself, but he is so busy; I saw he had not time; but I suppose my telling you of it is the same thing." At this part of the conversation the man of the house came up to where we sat—"Well, says he to James Dunn, the prisoner, "were you telling him?" "I was"—was James Dunn's reply.—"Well, what do you think of it?"

Says who?—Maurice Dunn to me—"Is it not a great thing?"—I told him, I was but one, I did not know what to say about it.

James Dunn was present at this?—He was.

What reply did he make?—"What do you think, if you mentioned it within?"

Who said that?—Maurice Dunn.

Was James present?—He was.

What more was said?—I asked where James Dunn lived, was it far off—He told me just down at Luttrellstown—I then stood up, and I left the two Duns together, and returned into the room, where the meeting was held.

What passed after you returned to the meeting?—I mentioned briefly to the members the conversation that passed abroad.

Mr. M^cNally.—Do not mention any thing that passed when Dunn was outside.

Mr. Prime Serjeant.—Was any question put to you respecting James Dunn?—There was.

Was he called into the meeting?—He was.

What was the first thing that passed upon his introduction into the room?—Maurice Dunn was called in before a word would be heard from him, and Maurice Dunn was asked

in the presence of James Dunn, if he would vouch for him; if he was *up* or *straight*, I do not know which; he said, "he would engage his life for him," upon which certain signs were put to him.

What signs?—Signs by which the people called United Irishmen were known to each other at that time.

He was tried?—He was.

Did he answer the signal?—He did.

After he had proved himself, what passed?—He was desired to sit down.

Who was chairman?—I was chairman: I again took the chair.

Having taken the chair, be so good as to tell what passed?—I then addressed James Dunn the prisoner, and said, "These gentlemen wish to hear from your own mouth, what you have been telling me abroad."—"Why, gentlemen," says he, "what I was telling that gentleman was, that I, and a few more friends were thinking of doing out Carhampton." He was asked—"Did he live under lord Carhampton?"—He said, he was his smith and farrier.

Did he assign any motive for this intention; what induced him?—He said pretty much what he said to me abroad, "That he heard down at his side, that he was a great hindrance to matters getting forward."

How was this proposal of his received at the meeting?—With much seeming satisfaction.

Do you recollect any particular expression?—I do.

Mention it?—One said, "It was great news"—another said, "It was glorious news"—another said, "It was the best news they heard yet"—and one said, "It would do more for the cause, than had been done before."

Do you recollect, whether there was a man of the name of Byrne at that meeting?—There was.—There were two Byrnes at that meeting.—[Here the witness pulled out a paper, which he said was a list of the names of the persons then present, and taken down at the time.]

Do you recollect any thing being observed by any person of the name of Byrne?—I do, by Thomas Byrne. It was asked by Byrne, "How could it be done?" He said—

Who said?—The prisoner; that there was a narrow part of the road leading to Luttrellstown, where there was a quick-set hedge, and a stone wall, and that from behind that would be the place to slap at him.

Was there any time, or day, or particular pointing out of the day, upon which it might be done?—The Sunday following was pointed out, but not at that time.

Tell what passed?—The prisoner, James Dunn, was then asked, "How lord Carhampton usually went out?" He said, he went generally in a post-chaise.—He was then asked, if many went with him? He said, none but the boy who drove him, to be sure; sometimes a footman went with him.—He was then asked, "If he did not go armed?" He

said, he always carried pistols about him, and was damned wary; but what would signify his pistols? one good blunderbuss would do as much as ten.

Well, sir?—He was asked the hour he generally went out. He said, sometimes sooner, sometimes later, but he could not go in or out, without his knowing it. He was then asked, Why he did not go to some other place to propose this scheme?—He said, the man of the house, or his wife, I do not know which, was a relation of his, and he chose to come there, as knowing it was the safest. He was then asked, how many of his friends were in the secret?—He said four, whom he had engaged to join him. He was asked, if they were along with him? He said no, but if any time was appointed, he would bring them, for he had nothing to do but slip out and fetch them.

Was there any time appointed for his bringing them in?—Yes; seven o'clock in the evening of the same day.

What was done after that appointment?—It was then proposed that an oath of secrecy should be taken by all then present, which was accordingly done.

Court.—Do you recollect the purport of the oath?—To keep secret the matter then proposed.

Mr. *Prime Serjeant*.—What farther passed?—It was proposed, that the names should all be taken down, that we might know one another. I took them down as they sat, or stood, beginning with myself. Here they are —[The witness then produced a list].

Mention their names?—William Carrige, Michael Farrell, Thomas Bourke, James Fairweather, John Taafe.

Court.—Is that the list you took at the time?—It is my lord. Matthew Lawler, Patrick Hicky, James Bacon, George Ryan, William Darcy, Garret Byrne, James Dunn, Thomas Byrne, John Farrell, Patrick O'Neil, John Whelan.—*They are all was at the meeting in the morning.*

Court.—How many are there?—Sixteen, besides myself.

Mr. *Prime Serjeant*.—Was there any scheme conceived of dividing or subdividing the party?—It was proposed and agreed to, that a committee of seven of the members present should be struck out to meet Dunn and his party in the afternoon.

Was a committee struck out?—There was. Name them?—I was first, William Carrige second, James Fairweather, Patrick Hickey, Garret Byrne, Thomas Byrne, and John Farrell.

After the committee was struck, was there any sign, or word agreed upon?—There was. What was it?—"A good act."

What was the effect of that word?—That the party might know one another when they met.

After the committee was struck and the pass word agreed upon, was there any time appointed for meeting again?—Yes.

What time?—The same day at seven in the evening, at the same house.

Who were to meet?—James Dunn, and the persons he was to bring, and the committee.

Be so good as to tell the Court and the jury, after the meeting broke up, what you next did?—I went home and determined with myself immediately to apprise lord Carhampton of what was going forward; and for that purpose, I went in person to the Royal-hospital, and not finding him at home, wrote a letter, cautioning him not to go to Luttrelostown on Sunday, as was his custom, or to that effect. I left the letter, and returned.

Court.—Where did you leave the letter?—At the Royal-hospital, the residence of lord Carhampton.

Mr. *Prime Serjeant*.—You said the committee were to meet at seven in the evening; tell the jury, what induced you to make this immediate communication to lord Carhampton?—To prevent the danger that was threatened.

Did any thing pass from Dunn, which made you do that?—Yes: Dunn said, it was lord Carhampton's custom to go to Luttrelostown on Sundays, and near that would be the place to do him. I apprehended, that he and his party might meet him and destroy him; therefore I told lord Carhampton without waiting the result of the committee.

At the hour of seven, was there any meeting of the committee, or any part of it?—There was; I was first, William Carrige second; James Fairweather was there; Garret Byrne, Thomas Byrne, and John Farrell; Hickey did not attend.

All the committee, save him, attended?—They did.

Did you see the prisoner that evening?—I did.

Was he alone, or accompanied by any person?—He was accompanied by four persons.

Name them?—As they gave their names to me, they are as follows [looking at a list].

Court.—Did you ask them their names?—I did, my lord—John Broderick, Peter Reilly, Patrick Carty, and Edward Martin.

Mr. *Prime Serjeant*.—Then there were eleven in all?—There were.

Be so good as to mention what was next done?—It was then mentioned to those four whom the prisoner had brought in, that an oath of secrecy had been taken in the morning, and it was necessary for them to do the like; which they did.

You were in a separate room?—Yes.

Tell the Court and the jury what passed afterwards—Did any conversation pass in the presence of Dunn?—There did.

Tell it?—Thomas Byrne said, "I suppose those are friends, and gentlemen; I suppose, we all understand, what we are met about?"

Did Dunn say any thing?—He said, "If they were not, I would not bring them here." Byrne said, "We know the business we have met about, had we not better proceed to

business? Well, Mr. Dunn, let us hear how you intend to do it; what is your plan?" or to that effect; I cannot exactly recollect the words.

Well, sir?—"The plan I had first a notion of," says he, "was in doing him out in the demesne, but then as I mentioned this morning, that would be liable to danger; the smallest noise would be heard, and he has a parcel of Highlanders there, and we thought it best to defer it, till we took better advice."

Was there any observation upon that?—There was; that his plan of doing him out upon the road was better, but it would be attended with danger, and he then proposed—

Who?—Thomas Byrne—That the party should go out mounted—it would be the most secure and safest method.

Was all this in the presence of the prisoner?—It was. The plan was then agreed to.

Was there any adjustment or settlement of the business?—There was—At first, nine was proposed to go out, of which I took a note upon this paper in this manner, "Nine number mounted."

Were the nine or any of them agreed upon at that time?—No, Sir. It was thought nine would be sufficient; but John Farrell mentioned that no man then present should be exempt, they should all go.

Was that agreed to?—It was.

Do you mean, that Dunn and his four men and the six of the committee should go?—I do.

Was there any time and what fixed for the execution of this plan?—The Sunday following.

Was there any and what reason assigned by any and which of the party for fixing upon that day?—It was mentioned by Dunn, that it could not be upon any other day; that was lord Carhampton's usual day for going to Luttrelostown, and they might be waiting long enough upon week days—that he seldom or ever went to Luttrelostown, but upon Sunday.

Was there any and what observation made upon that proposal?—It was then mentioned by Thomas Byrne, that the sooner it was done the better, lest the matter should get wind.

After this was agreed upon with respect to lord Carhampton, was there any scheme conceived, with respect to the persons who might be with him?—They were to be assassinated—to be shot.

Who?—The driver and the footman.

Was there with respect to any other person?—There was; in case he had any body with him—all were to be done.

Was there any reason assigned for taking off those persons?—There was.

By whom?—By James Dunn.

What was it?—He said that all lord Carhampton's servants knew him.

Was there any observation made afterwards?—There was by Thomas Byrne, and others—They hesitated upon it. Some

thought it a sin to put innocent men to death—Dunn said *doing* of him alone, would be doing nothing—for we will all be discovered.

Court.—What do you mean by *doing him*?—Shooting him.

Mr. *Prime Serjeant*.—Was there any observation made afterwards?—It was then agreed upon, that the whole should be *done*.

Do you recollect any particular expression made use of by any of the party?—It was agreed, that the whole should be taken off?—It was.

What engaged your attention next?—The manner of doing it.

Tell the Court and the jury, the manner in which it was proposed to be executed?—It was proposed by Byrne and agreed to, that three at least should go out disguised with loose coats and blunderbusses, and the rest as yeoman cavalry, to be armed with pistols.

Court.—Were the three to be on foot?—No, mounted.

Mr. *Prime Serjeant*.—What part of the duty were the persons with blunderbusses to do?—They were to come at the back of the carriage and to fire in—These with the pistols were then to ride on and fire in at the windows; lest the fire from behind should not have taken effect, and as they passed the footman and postilion, they were also to dispatch them—They were then to re-charge their pieces; ride on in a body towards Dublin, and keep together, so as to secure their retreat.

The oath of secrecy was taken at this meeting?—It was.

Do you recollect any thing particular being said by any of the party in the presence of Dunn?—I recollect an expression of John Farrell.

What was it?—When the book came to him, he said, "If this business misses, if provision be made for my family, I will undertake to do him in the streets."

After this was there any proposal, or intention to meet again?—It was proposed, and agreed to, that the committee should meet the Tuesday night following, at Dunn's, the same house.

Were there any directions given to James Dunn, the prisoner?—There were.

Maurice Dunn was not present at any meeting but the first?—No; James Dunn was to come on Wednesday.

For what purpose was James Dunn to come into town?—To receive communications from the committee, and to communicate them to his friends in the country.

Do you recollect any thing being said by any of the committee?—I do.

What was it?—William Carrige said, he could not attend, for he had nothing but his bread to depend upon—Whereupon John Farrell said, he should not be in the business, if he did not attend to it—for no man should be exempt from a business of the kind—that no business should be an excuse.

Had you any drink?—We had.

Was there any enquiry made with regard to arms?—There was, by Thomas Byrne, who asked, had any of the party arms—Dunn, the prisoner, said, his friend Reilly had a very good blunderbuss—As for his part, he had kept no arms lest he should be suspected since the affair of the Cormicks.

Had there been any mention of the Cormicks in the communication with Dunn before?—There had—As it appeared to me, to give himself greater credit with the committee, he said, he had planned the affair of the Cormicks.

Were you asked about your arms?—I was. What answer did you make?—I said, I had none, but I would try to procure some.

Did you make any attempt to procure any?—I did.

What passed then?—Shall I tell where I went to.

Do so?—The following day I went to a pawn-broker's in Dorset-street for the purpose of getting arms, to know whether he could furnish me. He agreed, and told me, I could have two or three blunderbusses and some pistols.

How soon after the meeting did you see the earl of Carhampton?—That night after I left the meeting.

You attended the meeting on Tuesday with the consent of lord Carhampton?—I did.

How many of the committee met on Tuesday?—Three—I saw but three.

You mean three besides yourself?—Yes.

Who were they?—Thomas Byrne, Garret Byrne, and John Farrell.

Did Maurice Dunn appear at this meeting?—He did.

Tell what part he took?—It was then suggested by Maurice Dunn, that a business of the kind could not be properly or cleverly carried into effect without money.

What passed in consequence of that?—In consequence of that, it was determined, that I should go to the secretary of the meeting, and acquaint him with their determination. I went away, and instead of going to the secretary's, I went home to bed.

This happened on Tuesday?—Yes.

Did you see the prisoner on Wednesday?—I did.

Where?—At Maurice Dunn's in Strand-street.

Did you see Maurice Dunn?—I did.

Did he say any thing?—He said, he heard that Carhampton had received a letter upon the business.

You saw the prisoner James Dunn?—I did.

What passed?—I asked him, if it was true, that Carhampton had got a letter upon the business as Maurice Dunn told me. He said it was no such thing—that lord Carhampton had taken up a man, but let him go afterwards as he was mad.

Did Maurice Dunn hear this?—He did.

Did he say any thing?—I do not recollect that he did: He seemed to be satisfied.

Was there any talk about money in the pre-

sence of the prisoner?—There was : Maurice Dunn told the prisoner he was going out along with me to the secretary of the Baronia, for the purpose of getting a supply of money, and desired him to wait till he returned.

Was there any objection made to that by the prisoner?—None that I could hear.

What was done in consequence of that?—We went away to the secretary of the Baronia, and having communicated the business to him, he said the treasurer was the proper person to apply to.

Who was he?—Thomas Bourke.

Had he been at the meeting?—He was at the first.

Did you go to him?—We did.

Where?—To a house in Grafton-street where we were directed, and where he did business.

Whose house?—Dignan's I think.

What passed there?—Maurice Dunn and he went into a small office in the shop and communicated the matter.

Mr. Curran.—Was this in the presence of the prisoner?—No it was not.

Mr. Curran.—Then, my lords, this is not evidence.

Mr. Prime Serjeant.—My lords, I should submit this is admissible evidence. Here it is proved, there was a meeting and confederacy.—Two of the conspirators went away deputed from the body—their acts are evidence against the others.—But at present, I will not press it. Did you see James Dunn the prisoner afterwards?—I did.

After you had been with Bourke?—Yes, when I returned with Maurice Dunn.

What passed then?—He told me he must come to town again, for we were not able to effect the business.

Was there any particular time appointed for his coming to town again?—I do not recollect, but he said in the course of the week.

Did you see him again in the course of the week?—I did.

When?—Either on Thursday or Friday, I think on the Friday following.

Did any thing particular occur between you with respect to this matter at the next meeting?—I do not recollect that there did; there were other people present.

We have now gone through from the 7th to the 14th. Do you recollect Sunday the 14th of May?—I do.

Did you see the prisoner James Dunn upon that day?—I did.

Where?—At Maurice Dunn's house in Strand-street on the morning of Sunday the 14th of May.

Did any conversation pass between the prisoner and you, or in his presence with respect to this business on that day?—Nothing but that the business had been deferred for want of money.

Whom was that with?—With the pri-

soner James Dunn in Maurice Dunn's presence.

James Ferris cross-examined by Mr. Curran.

Pray sir, what profession are you?—An attorney, sir.

How long have you been an attorney?—Since the year 1785, or 1786.

An attorney of repute I dare say you consider yourself?—I suppose so.

Of good character?—I suppose so.

Of course, sir, I dare say you have never been censured by any of the courts?—I was, for not attending pursuant to an order of the Court.

It was not for any embezzlement of any client's money?—It was not.

Were you ever charged with the offence of embezzling your client's money?—I was charged with having kept money.

That you ought to have paid over?—I do not say that.

In what cause was it?—In Farrell and Kelly or Kelly and Farrell.

How comes it you do not speak exactly? were you concerned for both? What was the charge made against you by Kelly?—Why, for keeping 14*l.* 15*s.* 9*d.*, which I received and refused to hand over to him, because he would not make an affidavit of the debt being due to him.

From whom did you receive that sum? From the defendant Farrell?—Yes.

You say, that Farrell had paid you that sum—I do.

For Kelly's use?—I suppose so, being the plaintiff.

Did you assign the reason of not paying the money over?—I did.

What was it?—Because he would not make an affidavit of the debt being due.

Therefore you refused?—I did.

Did you pay it back to Farrell the defendant?—No, I did not.

Do you recollect an action of Farrell against Kelly?—There was.

That was trover for 10*l.*?—I believe so.

You were attorney in that?—No.

Who was?—I believe a man of the name of Hickson.

Did you act at all in it?—I did not.

Was the action instituted by your means?—It was.

For whom?—For Farrell.

What was the subject of the trover? was it not a note which had been lost and advertised—I know nothing of the advertisement, Kelly said he lost the note.

Do you not believe, that the note was returned by Farrell's wife?—I believe it.

Was not the 15*l.* alleged to be the balance after paying the offered reward?—What reward?

There was a reward of 10*l.* for the return of the note, and another note was given for a larger sum than that reward? I know nothing of that.

You have heard that?—I did.

Did you not bring an action by Kelly against Farrell for that amount?—I do not know—he did not employ me.

The action was for 1*l.* 13*s.* 9*d.*?—I believe so: 10*l.* as I hear, was the reward; the rest was money advanced by Kelly's wife to Farrell.

Did you not hear that the wife returned the note for 100*l.*?—I did.

Did you not bring an action afterwards against Kelly for his own note?—I do not know that the action was for the note.

It was in trover?—It was.

Did you issue the writ?—I did.

In whose name did you issue the writ?—In the name of Hickson.

Who filled the writ?—I did.

Who put Hickson's name to it?—I did, with Hickson's approbation previously had.

The action was in Farrell's name against Kelly?—Yes.

Was Kelly committed upon that writ?—I believe he was.

Was there any sum paid by Kelly to Farrell in notes, or money?—There were five notes of 10*l.* each.

What was the value of these?—I do not know: I believe in part payment of the 100*l.* debt.

Did you draw any release upon that occasion?—I believe I did.

By virtue of your oath was not that a release of a threatened prosecution for a rape?—I heard nothing of that: I considered it a release of all civil actions.

Did you never hear any thing of a threat of a prosecution for a rape?—I did but I never threatened him.

Then it was a release in full of all debts, dues, rapes, and demands.—Did you consider the rape as a sum of money?—No.

By virtue of your oath had you heard of the rape before you drew the release?—I believe I did.

Kelly was in custody for his own note of 100*l.*?—I do not know that it was his own note.

Was not the note claimed by Farrell as his own property?—It was.

A sum of 50*l.* was paid in notes?—There was.

Kelly was in gaol at that time?—Yes.

You gave a release for 100*l.* and the rape was thrown in as a bargain?—I knew nothing of the rape.

There was some little talk about it?—There was.

How old was Kelly?—I do not know.

Is he not a creature above 10 years of age?—No.

How old do you think him now?—About 50.

You do not believe him to be more?—No.

By virtue of your oath did you ever swear, that you knew nothing of the issuing of that writ?—Never.

And so having brought an action against Kelly for his own note, he is put into gaol—a rape is threatened—he gives 50*l.* in money—you draw a release of all actions—and he is let out?—I heard he was.

Did you never swear you did not fill the the action?—No.

Who filled the notes?—I did.

Who filled the release?—I believe I did.

Who witnessed it?—I believe I did.

It was upon that action you were attached?—I believe it was.

It was part of the order that you should be struck off the roll?—It was part of the conditional order.

And you showed cause against that order, and set it aside?—No, I did not.

And you were considered as a respectable attorney?—You asked me my opinion and I gave it to you.

Did you ever swear you were not concerned in bringing that action?—Never.

And you had Hickson's consent?—I apprized him of it, before I issued it.

I have a curiosity to know why your own name was not used?—I did not like to be concerned for and against Kelly.

You had an objection, that it should be known you were so concerned?—That might be a reason; and I believe was.

Did you ever in any affidavit deny that you knew of the arrest?—No.

Did you ever swear you did not fill up the notes?—How could I swear that.

I know how you could swear it.—But I ask you, did you swear it?—No.

Did you ever deny the extortion of the 50*l.*?—No.

I suppose the 100*l.* note was given up by Kelly to Farrell in gaol?—I know nothing about that.

Did you hear that Kelly gave it back to Farrell?—I did.

Did you ever deny by any affidavit, that you knew of Hickson's name being to the writ?—I did.

Or that you gave directions to have the writ issued?—Where I issued the writ myself there was no necessity to deny my giving directions for it.

Did you ever call upon Hickson at all respecting the writ?—I did.

Did you ever deny that by any affidavit?—I did not.

Did you ever draw any information, or examination respecting the rape, with intention to have it sworn?—I do not recollect I did.

It is very odd, you cannot be able to say whether you drew this examination, or not. Where have you lived since? Have you practised as an attorney since you were struck off?—I have.

Have you taken any pains to conceal yourself from any process of the courts?—Never.

Have you a family?—I have a wife.

You have supported yourself as an attorney since that transaction?—No.

When did you become a United Irishman?—Some time in the month of April last.

I hope you think yourself an honest man?—I hope so.

By virtue of your oath, did you consider that you were entering into a just and honourable engagement?—Give me time to recollect; I will answer you fully and fairly. I did not consider it either fair, or honourable from what I heard before of it.

Did you bind yourself by any solemn oath to that engagement?—No.

You took no oath?—I read a declaration—but took no oath.

How came that? Is it usual? It is not usual for any man to enter without an oath?—No; but the person who made me did not know how.

You entered that society upon your honour?—No; but it was the bungling of the man; his name was Crane. He is gone abroad.

You are sure of that?—I do not say that.

You believe it?—I do.

Then we cannot confront him against you?—I do not know that—I believe you cannot.

Would you have taken the oath, if it had been tendered to you?—I would: I did not think it valid or binding; or any unlawful oath of the kind.

Then you would have taken that oath?—I considered it as a declaration.

You would have taken it, however solemn?—I would; for the purpose of obtaining the information I wanted.

Then you took the oath, to inform government of this design?—I did not take any oath.

You would have taken it?—I would that kind of oath, because I do not think it binding.

Do you not think an oath taken in the King's bench is pretty binding?—I do—because every oath these administered is lawfully administered.

And a man taking an oath there falsely deserves no credit?—I think so.

It was therefore, I take for granted as a friend to the law and constitution of the country, you became a United Irishman to disclose their designs, if they were bad?—I admit it; if I found their designs to be bad, as I did.

You acted from motives of loyalty?—I did; if I found them acting against the constitution of the country.

You had heard a very bad character of them before?—I heard their intentions were not good.

This was in April?—Yes.

How soon after did you perceive their designs were bad?—In about three weeks I obtained the information I wanted.

How long before the transaction you gave an account of?—About a week.

Then you were satisfied their designs were bad?—I was; I had no doubt about it.

How soon after the plot was hatched, did you see lord Carhampton?—That night.

That was the first conference you had with him?—No; the day before I saw him for the first time.

You are too pure a loyalist to expect any reward?—No, and if it were to do over again, I would do it at the hazard of my own personal safety.

You never were promised any reward?—No.

You never said that you were promised any?—Not that I recollect.

Are you not sure, that you never said you were promised?—I do not recollect: I do not think I did.

Are you sure?—I am pretty confident I did not.

Did you by virtue of your oath ever say—what is the name of the man who says you did?—I do not know.

Do you know a man of the name of Dugan?—Who is he.

He will be a witness against you—Did you ever tell any man of that name, that you were promised any picking in the ordnance?—Never, upon my oath.

Pray, did you, or did you not send the five notes that are spoke of, for execution, to Farrell?—I did.

Now, I ask you, did you ever swear you did not?—I never did.

Pray, sir, do you remember having been concerned in a case of Farrell against Hanly?—No, it was a partner of mine of the name of Lendrum, that was concerned.

Did you ever draw an affidavit to set aside a nonsuit?—I did.

In whose name was it?—Edward Smith.

Who signed it?—I do not know; I drew it at the request of Edward Smith Farrell; he told me, it was for Edward Farrell, and he took it away. I do not know who signed it, or whether it was signed or not.

You are struck off the roll of the court of King's-bench?—No; I was suspended in the exchequer; it was part of the conditional rule to strike me off, but I understand that was not done.

You are under censure?—I was suspended by the court of exchequer for preferring an appeal to the Lords in order to serve my clients.

Had the celebrated Mr. Brodie any thing to do with that?—He had and suffered very justly; he signed the petition of appeal, and had a bond to indemnify himself. For that, and ignorance of his profession, the present chancellor stripped him of his gown.

He was your partner?—No.

And you were stripped by the court of exchequer?—No, I was suspended, for not attending pursuant to order.

Look at that replevin: did you issue that?—Never.

Court.—You were censured for preferring an appeal?—No, my lord, for not attending an examination respecting that appeal.

Mr. Carran.—Mention why you did not attend?—I was a good deal alarmed at the time, and was advised not to attend: I was told the Court would commit me to the Marshalsea, and to avoid that, I did not attend.

A very excellent reason?—I give you my reason.

Do you know a man of the name of Owen Reilly of Barrack-street?—I do.

Did you ever procure any spirit license for him?—No: I was not in the habit of procuring licenses for any man.

Did you ever produce any license to him as having procured it for him?—Never; I was concerned for him as attorney.

Do you recollect having had a note in your possession belonging to a man of the name of Farrell?—I do.

Do you recollect having signed any indorsement upon it?—Never.

Whose note was it?—Cooney's note payable to Sylvester Farrell, and no indorsement. And you signed none?—No, I did not.

You might have done it innocently?—I might, but I did not.

What became of it?—I do not know.

You say that upon your oath?—I gave it to Edward Smith Farrell.

But what became of it since?—I know not.

Where were you when the notes were drawn up?—In Giles's, Angel-alley.

The Earl of Carhampton.—Examined by Mr. Solicitor General.

Have you ever seen the prisoner, James Dunn?—I have.

How long have you known him?—I have known him a great number of years; as well as I recollect, fourteen, or fifteen years at least.

Where has he lived latterly?—In a house of mine, close to my park-gate.

In what occupation?—He has been my smith, and farrier.

Your lordship passed frequently by him, so as to know his person perfectly?—Perfectly.

Pray, my lord, how soon after his being committed to prison did you see him?—I was present, when he was taken and committed.

In whose company was he?—He was in company with Patrick Carty, one of the persons indicted for this offence.

Was he the man of whom the last witness spoke?—He was.

What was he?—He had been in my employment in the demeane of Luttrellstown, almost from his infancy.

What induced your lordship, or those acting under you, to take these men?—When the plan of assassinating me was originally communicated to me by James Ferris, the witness, who has just quitted the table—I received a letter from him on Sunday the 8th of May, I think, desiring me not to go to Luttrellstown, as was my custom—I have the letter in my pocket; whether I ought to refer to it, I am in the judgment of the Court.

Mr. McNally objected to the letter being produced.

Mr. Solicitor General.—I have asked his lordship, how he came to arrest these prisoners; I am not desiring the letter to be produced, if it be objected to;—but he says, it was in consequence of the conspiracy being communicated to him, that he had them arrested.

Lord Carhampton.—If I had not received the information I did from Ferris, I would not have arrested Dunn or Carty; but I thought it necessary to suggest at the same time to the Court, that I had the letter from him.

You had other communications from him, besides the letter?—I had several: he attended by my advice, and upon receiving information, that I was to be assassinated upon Sunday the 14th ———

[The counsel for the prisoner objected to this evidence.]

Your lordship caused the prisoner to be arrested?—On the very Sunday in the evening, when I was to be assassinated, I was riding with two aid-de-camps; I discovered Dunn, Carty, and others crossing the park; one of my aid de-camps put spurs to his horse, and galloped up; he then made signs to me, that those were the persons I was looking for; I rode up, and caused them to be arrested.

Were James Dunn and Patrick Carty the persons you were looking for in consequence of the information you had received?—They were two of them.

Upon what day were they arrested?—Upon Sunday, the 14th of May.

They were accordingly committed to the prison?—They were.

Your lordship had occasion to visit them in the prison after?—I visited the prisoner at the bar next morning, Monday, the 15th, in prison.

Did your lordship go unattended?—No: I went with my aid-de-camp, captain Eustace.

You had some conversation with the prisoner?—I had.

I ask your lordship, whether antecedent to, or during the progress of the conversation, you held out any hope, or terror, or intimidation of either, towards the prisoner, in order to induce him to say any thing to you?—None at all.

Mr. McNally.—I object to this evidence, and the ground of my objection is this: lord Carhampton is a justice of the peace for the county of Dublin—I desire to ask—Did your lordship go as a magistrate to speak to the prisoner, upon the matter now in issue?—I did not go as a magistrate at all to him.

Mr. Solicitor General.—I now ask your lordship to detail what passed between the prisoner and you in prison?—I went to visit the prisoner at the bar, in some measure with a hope that I might be able to obtain information, where I could take Reilly, Broderick,

and Martin, against whom I had information for the crime in question; and upon my asking him some questions relative to Broderick and Martin, I think he told me, that he did not know. The first question that occurs to me to have asked, was, what was become of Martin, Broderick, and Reilly. He told me he could not tell. I then told him, that considering the kindness I had shown him, I little imagined he would be concerned in an attempt upon my life. To my utter astonishment, without any hesitation, he told me, that he thought it was a good act!—I was exceedingly surprised at the candour of his answer, and it induced me to ask him other questions. I asked him, whether he himself had proposed to murder me? He told me he had. I asked him when it was, that he first formed that intention? He told me, about Christmas last. I remarked, that he had had several opportunities since that time, when I walked by myself in the park. He said, he had no personal dislike to me, and would never execute it alone, but with his party. I asked him, if he knew James Ferris? He told me he did.

That was the last witness?—Yes; I asked him, if I had ever done him any injury; he said I never had; but that he was sworn to execute it, and if he were out of that, he would execute it if he could. I then said to him, though you might think it a good act to murder me, why would you shoot a poor innocent postillion? "Why," said he, "to do the thing completely." I told him he had very little compassion upon his wretched wife and family, who were starving. He said, the poor woman knew nothing of the matter. I told him, I had sent her half a guinea, for which he said he returned me thanks. He said, he never expected forgiveness; and that surprised me.

Do you recollect what passed in the presence of lord Enniskillen?—I do.

Mention the occasion of his lordship being there?—When I quitted Dunn, I went into town, and I mentioned those circumstances which I have been now stating to the Court to several persons of my acquaintance. The next day, on Tuesday, lord Enniskillen came to me, and told me, he heard this story.

That is not evidence; but mention what passed in the presence of the prisoner?—I took lord Enniskillen with me. Having heard of the report in town, he said, he had a curiosity to see such a monster as he heard was in the gaol.

In consequence of that desire you went to the gaol?—I did, and told lord Enniskillen he would hear it from his own mouth. I put the same questions, and he answered very much in the same manner he did the day before.

If you had any other communication with him, mention it?—Antecedent to this time, the prisoner had been kept from seeing any body, and I did desire, at his request, that his wife might be admitted to see him; and on Wednesday, I think the day after he had

made this candid recital, upon my asking him, taking it for granted he would not vary from what he said the day before, he altered his tone, and told me, he believed he was mad, when he told me what he did, and would say nothing more of the matter. I asked him, whether he was prepared to deny all he had said two days together; he said, he was; I asked him, what made him alter his mind; he said he did not know, but supposed he might be mad. At this time he was free to walk about, and upon his coming up close to me, and having expressed an alteration in his mind, and not liking his looks, and having nothing but a switch of this size in my hand, I bid him "keep off, you scoundrel." And the end of the switch being scraggy, tore his skin under the eye. When I spoke to him before, I had pocket pistols for my defence in my pocket, and my hand upon the cock, concealed from him. This day, I had not.

No kind of terror could have arisen in his mind from the apprehension of your having pistols?—On the contrary; for I spoke kindly to him, and ordered him porter.

He did not express any apprehension?—No, it appeared a sort of contrition. I forgot to mention, when I went with lord Enniskillen, Dunn was at prayers upon his knees, and when we went in, he rose up, and made the declarations I stated.

Carty was a labourer in your employment?—He was.

He was not in the room when this conversation went on?—No, Dunn was alone.

The Earl of Carhampton cross-examined by Mr. M^r Nally.

When your lordship first went to this man, you went accompanied by captain Eustace?—I was accompanied by captain Eustace the first day he was put into prison.

When you had the conversation with the prisoner, was captain Eustace with you?—He was.

Was he armed?—I believe not.

You were?—I had, as I generally have, pistols in my pocket.

From the manner in which you appeared, do you not think, the prisoner was aware you were armed?—I believe he might.

He had been strictly confined, until indulged by your order?—He was in a cell; they are called cells, but they are rooms in the nature of cells.

Was he bolted at the time?—I ought to recollect that—I do declare it should have made an impression upon me—I believe he had irons on the first day.

If he had irons, they could not have contributed to the ease of his mind. How long had he been in custody?—Since the day before.

Had he got food in that time?—He had.

As soon as he was liberated from the irons, he denied what he said?—No, sir. I mention it for the sake of the prisoner. The first day

irons were put on him. On the Monday he was freed from the irons, and he had food by him, when I went in, and he remained without irons on Tuesday, when he made the declarations before lord Enniskillen. I now say positively, he had irons on Sunday, which were taken off on Monday.

Court.—Had you any reason to suppose, when you had the conversation with the prisoner, that he knew you had pistols in your pocket?—I am inclined to think Dunn knew I never went without them. In order to satisfy your mind, that he rather conceived I had arms, I do recollect, that on the next day, Tuesday, he said, "Now, I have told you the truth, I do not care how soon I die, you may shoot me."

Were any hopes held out, that he would not be prosecuted?—No.

Did you give him any manner of caution as to the consequences?—No. I can assure you, that when I asked him, how he could have thought of murdering me, I did not think he would have answered; and when he answered me, as he did, I was all astonishment.

Mr. Solicitor General.—Carty was taken prisoner with Dunn?—He was. I omit purposely some of the conversation relating to other matters, as I understand it is not proper to mention it.

The Earl of Enniskillen examined by Mr. Townsend.

Do you see James Dunn, the prisoner at the bar?—I do.

Have you ever seen him before?—I have.

Where?—I believe I have seen him at Luttrellstown, but the first time I am certain of having seen him was in the gaol at Kilmainham.

Upon what occasion?—Having the day before Tuesday, the second day after Dunn was taken, heard a good many of the circumstances now related, they raised a curiosity in me—I went to breakfast with lord Carhampton, and expressed a wish to see the man, who could be so ungrateful as to think of murdering a man with whom he had lived so long. I went to the prison. The door of the cell was opened—the man was upon his knees, and appeared to have been some time so, for he rubbed his knees—his stockings were down, and the knees of his breeches open—he appeared in a most devout posture.

Was there any conversation?—Lord Carhampton asked, had he got the refreshment he sent him?—He said, he had, but had some of his own. Lord Carhampton then asked, "What induced you to think of murdering me—what harm did I do you?"—"For the good of the party."—"What harm did the postilion do you?"—"None; but that we might do the business completely."

Can you recollect any thing farther?—Lord Carhampton asked him, where it was they intended to murder him. He said on the

road going to Luttrellstown. He then approached lord Carhampton, with his arms folded—"And, my lord, if it were to do again, I would do it; it was for the good of the cause; I have not altered my opinion."—Lord Carhampton said, he had many opportunities, knowing he walked alone in the demesne—"No," said Dunn, "I would have attacked you with my party, for the good of my party, but not alone."

You could see him accurately?—I was within eighteen inches of him, looking with astonishment.

Did he appear to be influenced by hope or fear?—Not at all. He seemed quite resigned, as if making his peace by his prayers. He said, "I am ready to die immediately; I care not how soon I die."

Was there any other person present?—Captain Eustace was at the door, and the under-gaoler.

The Earl of Enniskillen cross-examined by Mr. Greene.

Before lord Carhampton and you had any conversation as to the alleged conspiracy, they conversed with respect to some refreshment?—Just as we came in lord Carhampton asked, "Have you got the refreshment I sent?" The other said, he had.

He knew of lord Carhampton's intention to send them?—I suppose he might have known it: he acknowledged he received them.

Did the conduct of lord Carhampton manifest a disposition to lenity?—Certainly, and it surprised me; for I would not have done it with any man who conspired against my life.

Mr. Attorney General.—My lords, the other witnesses, who were present at these declarations, are in court, but we think it unnecessary to examine them. If the prisoner's counsel wish, they may examine them.

Court.—Prisoner, now is your time to make your defence.

Prisoner.—Lord Carhampton thrust me in the eye on Monday, not on Tuesday, as he said; what happened afterwards I cannot say; I was not in my reason for a few days at that time.

Lord Carhampton.—It was not on Monday I struck you with the switch.

EVIDENCE FOR THE PRISONER.

Thomas Carey examined by Mr. Curran.

Are you an officer of the court of King's Bench?—Yes.

What papers are those in your hands?—Three affidavits.

Did you find them among the records of the court?—Yes.

You found them in the place where affidavits are usually filed?—Yes.

John Hickson examined by Mr. Curran.

You are an attorney?—Yes.

Of what court?—King's Bench, Exchequer, and Common Pleas.

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You know James Ferris?—Yes.

Have you ever seen him write?—Yes.

Look at that [showing him one of the affidavits with the signature, "James Ferris"]?—I believe that to be his hand-writing.

Did you give Ferris authority or permission to issue any writ in your name in the cause of Farrell against Kelly?—I did not: If you'll let me explain myself about it, I will. He applied to me in a cause of Kelly against Farrell, and requested me to draw a notice of bail, which I did. He came back some time after with an affidavit for a writ; I read it, and said it was an extraordinary thing, you want to be concerned against your own client. I gave him positive directions not to put my name to any writ.

[Here the affidavit proved by Hickson was read: it appeared to have been sworn before Mr. Justice Chamberlain, signed James Ferris, in which he denied several charges made against him, in the cause of Farrell v. Kelly. He denied, that he knew any thing of the issuing of the writ against Kelly, or that Kelly was arrested, or of drawing the five ten pound notes, or that he knew of Hickson's name being signed to the writ—or that he ever applied to Hickson.]

Edward Smith Farrell examined by Mr. Emmett.

Do you know James Ferris?—I do.

When did you first become acquainted with him?—In bringing an action against a man of the name of Hanly.—I became acquainted with him in the hall of the old Four Courts. Miles Moran was originally employed, and Ferris told me, Moran was not going on properly, and would not bring the matter to issue; I gave him and Lendrum power to change the attorney.

Did they carry on the business for you?—Lendrum did; they dissolved the partnership.

What was the event of the suit?—I was nonsuited.

Was any affidavit made to set aside that nonsuit?—There was, to invalidate the testimony of one Hanly.

In what name did the affidavit purport to be?—Edward Smith, whom Ferris said he knew.

Did you see any person sign that affidavit?—I saw Ferris sign the name of Edward Smith.

Was it ever filed?—He told me it was filed, and I served a notice at his desire upon the opposite party.

Was that motion made?—No.

Why?—I thought from every appearance it would be useless.

Do you recollect a promissory note of John Coonan, of Ballymore Eustace?—Yes.

For what sum?—67*l.* 10*s.* 4*d.*

To whom was it payable?—To Sylvester Farrell of Little Britain-street; Ferris gave it me to sell it.

Did he do any thing to it?—He put the name of Sylvester Farrell upon it. I have the note.

By virtue of your oath, who wrote the name of Sylvester Farrell upon the back of that note?—James Ferris.

You swear that?—I do.

You are at present confined in the Marshalsea?—Yes.

For what debt?—20*l.* the costs of the nonsuit in that cause.

You have heard of a cause of Farrell against Kelly?—Yes, for I have been implicated in it.

Do you know Owen Reily of Barrack-street?—I do.

In what situation is he?—He keeps a public-house.

Do you recollect any person, and whom, filling a spirit licence for him?—I cannot tell whether it was a spirit licence or not; it was a paper to get a licence by. Ferris brought him to a public house at the back of the Four Courts, and filled it.

Was there any name to it?—No.—I had an order of the court of conscience with sir William Worthington's name, and Ferris took it from me, and desired us to go out until he wrote the name; we returned, and saw the name written to the paper; the ink not dry. Reily was to swear to it, and he got the licence, it was so well done.

Sir William Worthington was not there?—No.

You have seen Ferris in the Marshalsea since?—No; I have seen him in the Sheriff's prison.

What conversation had he there with you?—He had different ones.

What conversation had he in March last about making a man of you?—He alluded to a thing of the kind. I said, it was a critical business, and I had no friend to extricate me. He said he would make a United Irishman of me, and if I would assist him in a pull, he would put me beside shoe-making business. I said, it was a hazardous business, and such a pull might leave me under an obligation of quitting the kingdom, or get myself murdered.

He was to make a United Irishman of you?—I did not understand much about it, and did not like talking of it to him.

Is Ferris a man of good reputation—to be believed upon his oath?—No.

Edward Smith Farrell cross-examined by Mr. Attorney General.

You are Edward Smith Farrell?—Yes.

And you are to take away the credit of Ferris?—No.

What else brought you here?—To tell the knowledge I had of him.

And that is, that he is not to be believed?—I think he is not.

You were nonsuited?—I was.

And you wanted to set that aside?—Yes.

And it was necessary to make an affidavit?—So he told me.

An affidavit was to be made, and the affidavit was to be sworn by Edward Smith?—Yes.

And it was prepared, and you stood by, and saw Ferris put the name Edward Smith to the affidavit?—I did.

And without ever being sworn by Edward Smith, or any other person, it was to be made use of to set aside the nonsuit; and you stood by and saw it done?—I did.

Was not that a wicked transaction, as you are in the presence of God?—I knew no better, as he advised me.

You knew no better; to see an affidavit drawn up and signed by a name of a person who did not appear, and it was to be made use of in a court of justice. Do you mean to say you are so ignorant, or so wicked, as not to know it was a fraud, or to disregard it?—I did it by his advice.

Were you so ignorant or so weak as not to know, that it was not a fair transaction?—Any man's sense would tell him it was not fair, and that was the reason I did not proceed farther upon it.

Was it because you thought it wrong, or were told it was improper?—I thought it would be of no use.

You said upon your direct examination, that you were told it would not answer; was not that the reason?—No; I thought no more of it.

Your name is Edward Smith?—My name is Edward Smith Farrell. I signed a note Edward Smith Farrell to make a distinction between others, which were signed by Edward Farrell.

Why did you sign Smith?—Because my mother's name is Smith, and to make a distinction.

There was a promissory note you say drawn in favour of Sylvester Farrell?—Yes. Ferris desired me to go to the drawer of it, and I would get twenty guineas, that I should have ten, and he would have ten more.

You took the note upon those terms?—Yes, but I did not go; it shows I had no design, or I would have gone to the drawer.

Why not give it to Sylvester Farrell?—I did not see him.

Did you ever look for him?—I was to hold it for him.

Did you look upon it as an honest transaction?—No, I did not.

Where does Sylvester Farrell live?—He keeps a tea-house in Drumcondra.

How long are you in the Marshalsea?—Since the 18th of February last,

And James Ferris applied to you to become a United Irishman. When was that?—In the latter end of February or beginning of March.

You are in the Four Courts Marshalsea?—I am.

When were you removed from the Sheriff's prison?—On the 6th of May.

What did Ferris apply to you for?—To be an assistance to him.

What did he say?—He told me I had an opportunity of making my fortune, and put me past shoe-making. I asked what were the means he had; he said he had a pull that I was not up to. I asked him what it was. He hesitated, and then said, you are a blabbering sort of a fellow. I said, no, that I had stuck to him. He said, there are great sums of money to be had.

Your objection was, that you had no friends to extricate you?—Yes.

If you had friends to extricate you, you would have agreed?—No, I would not.

You were true to him till that time, although you saw a false name put to an affidavit, and saw a name put to a note, and you were true to him; and would become a United Irishman if you had a friend to extricate you from the gallows?—No, Sir, I gave you my reasons, and excellent ones they were.

You were faithful to this man down to the month of March. Had you any quarrel with him?—No.

Have you had any communication with him?—No, I could not visit him, and he was not kind enough to visit me.

That vexed you?—No, I thought the absence would be better on my side.

You look upon him as a very bad fellow?—I do; and myself as bad for knowing him.

Did you ever write to him?—I did.

You said you had no communication with him?—I wrote a bit of a note to him. His father brought me a bit of a note, and I sent word by the father to buy shoes from me, if he wanted them; to take three pair of shoes, and pay a guinea for them, as I looked upon him to be full of money.

Was the guinea to be paid before the shoes were made?—No: if he had sent the order, I would have made the shoes. When I got no answer, I sent the maid with another note.

You were upon good terms with him then?—And I am so still.

Is that name, Sylvester Farrell, Ferris's usual writing?—No, he made three or four others before he hit off this: he had a paper with the name of Sylvester Farrell upon it.

What was that you said of Reily, was that before or after the nonsuit?—You put me to a stand; I cannot recollect.

Was it before or after the indorsement upon the note?—I cannot say.

Then you were upon friendly terms with him, and are so still?—No, the bands are broke.

Were you ever in the gaol of Newgate?—I was.

Who swore the affidavit of Edward Smith?—I cannot say.

Is it upon the file?—He told me it was, and asked me did I think he would tell a lie.

Whose note is this?—It is mine.

No, not yours, it belongs to Sylvester Farrell?—Yes.

How long have you had it in your possession?—Since March.

And you never sent it?—No, I could not go.

But you had a mode of sending?—I did not know where he lived.

[Here the counsel for the prisoner produced a note, which the witness swore he believed to be Ferris's writing, and which the witness said was brought to him by an apprentice boy of one Hanly, a tailor in Thomas-street.

The note was read, viz.

"Mr. Ferris requests to know from Mr. Edward Smith Farrell, if the affidavit of Edward Smith be in F.'s hand-writing, as an indictment for personating another man may be preferred against him at the next commission."]

Mr. Attorney General.—When were you first applied to for your evidence upon this trial?—Last Saturday.

You were not applied to in July?—No, I was not.

Did you hear that James Dunn made an affidavit to put off his trial last July?—I know nothing of any of the persons sworn against; I never saw Dunn.

I did not ask you; but whether you heard, that an affidavit was sworn?—No, I did not.

Who told the friends of Dunn, that you received that note?—I showed it to Cronyn, and several in the Marshalsea. He said, do not write to the villain; he wants something under your hand.

Mr. Curran.—My lords, I am aware that I am not entitled to speak to the evidence, but I beg leave merely to suggest one point to your lordships—It is this: putting out of the case altogether the testimony of Ferris, contradicted as he is, the case would be confined to the testimony of lords Carhampton and Enniskillen of the declarations of the prisoner, which evidence does not support the present indictment for the particular conspiracy therein described, any thing said by the prisoner, with allusion to what was mentioned by Ferris, can receive no illustration from it. Any general admission of an intention to murder made by the prisoner with a mind ever so clear and unbiassed cannot be illustrated by Ferris's testimony, if that be put out of the case. The prisoner may have had an intention to murder, that may appear by his own declaration; but yet that will not support the present indictment, because to support it, there must be evidence of a conspiring and confederating with the persons named in the indictment, of which there is no evidence beyond the testimony of Ferris.

Mr. Prime Serjeant.—My lords, it is not my intention to avail myself of my right to address the jury upon this case.

Mr. Justice Boyd.—Gentlemen of the Jury; the prisoner is indicted, for that he with others, being evil disposed and designing persons, on the 7th of May, in the 37th year of the king, wilfully, maliciously, and feloniously did conspire and confederate together, of their

malice prepossessed, to kill and murder the earl of Carhampton. Gentlemen, the attorney-general did very properly state, that by our law, conspiracies to murder were capital offences. But after some time, it ceased to be capital, and became a misdemeanor. But a modern statute has made the combining and confederating together to commit a murder, a capital offence, and it is determined by the highest authority, that the very agreeing to do the act is the crime, and that it is not necessary to prove an overt act in consequence of that agreement as in case of treason. The words of the statute are, combining, confederating and agreeing together, &c. Therefore the agreeing to do the act constitutes the crime, although no act be done in consequence of it; and it is not necessary for a prosecutor to prove an overt act.

Gentlemen, there are a number of persons indicted for this offence. The only one for your consideration now, is the prisoner at the bar. To prove this conspiracy, the first witness produced was James Ferris.

[Here the learned judge recapitulated the testimony of Ferris.]

Gentlemen, the cross-examination of this witness went to show, that he does not deserve credit. The fact of his saying, that he issued the writ with Hickson's permission is material, because Hickson positively denies it.

I am to observe to you, that if you do not think the testimony of Ferris is supported by the testimony of lords Carhampton and Enniskillen, their testimony fails, because the confession of the prisoner does not go to prove the identical conspiracy laid in this indictment. If you believe Ferris, and think him supported by the evidence of lords Carhampton and Enniskillen, you will then find the prisoner guilty.

Gentlemen, Thomas Carey was produced. [The learned judge then stated the affidavit and subsequent evidence.] These, gentlemen, are the facts to discredit Ferris: he gave a long history of the proceedings. That he attended these meetings is to be taken as true, as he gave information by letter to lord Carhampton, which was proved. That to be sure is a mere assertion of his own, but in consequence of it the prisoners were apprehended, and Ferris did not know the prisoner till he joined the society, and the prisoner admitted he knew Ferris. The testimony of Farrel, which went to impeach Ferris, shows him to be a participator in every guilty act, which he imputed to Ferris.

Gentlemen, much depends upon the credit of Ferris: if his doubtful testimony be set up by the evidence given by lord Carhampton and Enniskillen, that goes to establish the conspiracy in the indictment. But if you do not believe him, their evidence is not sufficient to support this indictment.

Mr. Justice Downes.—Gentlemen of the

Jury; I must make a few observations to you upon the most important duty, which you have to perform. The prisoner is indicted upon a statute, making conspiracy for murder a capital offence. Gentlemen, I need not tell you, that it calls for particular caution in forming your verdict, where the consequence affects the life of the prisoner. At the same time I should hope that caution would apply in every case, let the consequence be what it may.

A conspiracy of the most abominable and dark nature is related to you by Ferris. I shall not go through all the particulars; it is enough to say, that if he obtains credit from you, he has stated a most abominable conspiracy, such as this statute meant to punish, and has brought home to the prisoner, the deliberately purposing to commit a murder, attending at two or three times, proposing his plan, hearing objections to it, and adopting another proposed by some members of the meeting. A plan, the more extraordinary, as not founded in private malice towards the person conspired against. But it is made the more alarming and astonishing, as it is made, if you believe the witness, in pursuance of a plan by a party, rejoicing in the scheme, as one of the greatest benefits which could accrue to their cause.

Such, gentlemen, is the charge, and if you believe Ferris, it is fairly and fully brought home to the prisoner.

The credit of Ferris is attacked, in my apprehension very powerfully; first by the testimony of Hickson, then by the testimony of Farrell; and by a comparison between his own testimony and his affidavit formerly sworn.

Gentlemen, I must observe, that the particular facts, which form the ground upon which his credit is impeached, have no direct reference to the case before you. Those facts were examined to, in order to show, from the mouth of Ferris himself, that he is a man of such conduct as renders him undeserving of credit. This they endeavour to show from his own mouth by what he swore upon a former occasion, and by the testimony of others.

As to Hickson, his evidence is confined to the simple fact, whether he had given authority in a particular cause to issue a writ, which authority Ferris swears positively he had. In that fact, Hickson flatly contradicts him, for he says, he positively forbid him to use his name.

With regard to Farrell, it has been observed by my brother Boyd, and I concur in the observation, that in every act in which he delineates Ferris, he is a participator of the guilt, if you believe him. But upon the examination, Ferris's account of himself puts him in no favourable point of view. Indeed, you must not expect a witness from such a conspiracy above all exception. He appears to be a practising attorney of no fair character, acting

for both parties in a suit, and suspended by one of the courts, for refusing to obey their order. Thus he represents himself.

But I have said supposing the conspiracy to be true, you cannot expect an account of it from a man, against whom it would be impossible to allege an objection. If you believe the witness, he has fully established the fact. Gentlemen, there has been evidence laid before you, deserving your most serious attention: you are to consider whether that evidence has made the account given by Ferris receive your implicit credit: I mean the testimony of lords Carhampton and Enniskillen: whether that evidence has made you believe, without any rational doubt, that the account given by Ferris is true; because you must adopt the truth of that story told you by Ferris, where his credit appears in so favourable light, contradicted by himself, by Hickson and by his own former affidavits, all going to impeach his credit. But however if after the account given by those two other witnesses you credit the account given by Ferris, there is a case upon which you should find the prisoner guilty. For, as my brother Boyd has stated, you must believe, that Ferris told complete and perfect truth, or in my apprehension, the evidence, supposing his testimony out of the case, will not go to support the conspiracy in this indictment; because it is an indictment for a conspiracy to murder the noble lord, at a certain time, by certain persons named in the indictment, the knowledge of which circumstances comes alone from Ferris.

If his account be true, it establishes the indictment. If, I say, notwithstanding the impeachment of his testimony, you take it to be true, the case, in my apprehension, is established against the prisoner.

I still must remind you, gentlemen, that in all cases of credit, it is not for us to give any opinion. It is for you alone to determine. We lay before you such observations as occur to us. But it is for you alone finally to decide.

As to the evidence, I have already stated what has been given. It is not necessary to go minutely through it. I have in general alluded to the objections to the credit of the witness.

But the case on the part of the crown does not rest upon the testimony of Ferris, with respect to the whole of the fact, though I again repeat, that you must believe that account before you can convict.

You have the evidence of lord Carhampton stating an admission from the prisoner's mouth. This is evidence always to be received with caution. There is no manner of doubt, that the declarations, the expressions of a man accused may be brought in evidence against him. But it is always necessary to examine in what manner those expressions were uttered; and how they were induced, and whether any pains were taken to procure them from the prisoner.

Gentlemen, I will state to you, what I take

to be law without any manner of question. The rule of law is drawn from a wise consideration of the crime, and an impression of the various facts. I take the law to be as laid down and the reason of it given in a book which I shall read to you.

"The human mind," says the law book, "under the pressure of calamity is easily seduced, and is liable in the alarm of danger to acknowledge indiscriminately a falsehood or a truth, as different agitations may prevail. A confession therefore whether made upon an official examination, or in discourse with private persons, which is obtained from a defendant either by the flattery of hope, or by the impressions of fear, however slightly the emotions may be implanted, is not admissible evidence."^{*} I take that to be clear and undoubted law. Where the declarations of a prisoner are to be given in evidence against him, the Court in the first instance is to see under what circumstances such evidence comes before them: and if they see in the introductory testimony of the witness, that he held out hopes or fears; that he threatened the party, or gave hopes of pardon to induce the confession, if any thing, I say, of that sort appears, it will be the duty of the Court to stop it altogether.

Accordingly in this case, inquiry was made, and lord Carhampton said, he held out neither hopes, nor fears. That being the case, it was the duty of the Court to receive that evidence. We were bound not to stop that evidence from going to you; but to leave it to you to determine what weight it should have as well with respect to the credit of the first witness, as other parts of the case. From the whole of the transaction, and from the manner in which the words were uttered by the prisoner, as brought in evidence before you, you are to judge, whether lord Carhampton held out such hopes, or fears, as induced this confession. If in fact he did, then you are to discard that confession. But if he did not, then you will judge what the effect of the confession is.

Lord Carhampton told you, he went not to ask the prisoner any thing respecting himself, but with respect to others, and the question he put seems to go no farther: he asked, where these men were? The prisoner refused to give any information, and having refused to make the slightest disclosure, lord Carhampton says, "I little thought you would have attempted to murder me;" and he said it was an exclamation that broke from him in wonder and astonishment, that the prisoner should have undertaken so abominable a murder. Upon this, you find the man, who had refused to disclose any thing respecting others, frankly stating his own guilt, stating his motives, not from any personal objection,

but as he says, for the good of the party, and this admission comes from a prisoner, refusing to disclose any thing, respecting any other person.

Gentlemen, we find, according to the testimony of lords Carhampton and Enniskillen, that the prisoner, not only upon that occasion, but upon the following day, in the presence of lord Enniskillen, upon the question being put to him, gave directly the same account, as he did the first day to lord Carhampton.

Lord Carhampton then gave directions, that the prisoner's wife should be admitted to see him. It seems that before that she was excluded. After this, upon Wednesday, lord Carhampton goes again, and then you find, that the prisoner flatly denied all he had said before, alleging he was mad when he said what he did. He was asked, was he prepared to deny all he had said, he said he was, and he refused to say any thing more.

Gentlemen, when the confessions of a party are given in evidence, it is a sound rule to carry them no farther than the expressions in which they are made naturally convey; and upon these declarations as sworn to by lords Carhampton and Enniskillen, you find the prisoner express a determination to destroy the noble lord, stating that it is not for any particular enmity, but for the benefit of a party; that he would not take the advantages he had from time to time, because he would not do it alone, but only with a party, and for the benefit of a party.

Now, gentlemen, if this evidence of the declarations strikes your mind to be fairly obtained, without any hopes, or fears held out, and that you will consider from the circumstances of the case altogether as well as from the direct testimony; if I say, you believe, that these declarations fell voluntarily from the prisoner; that they fell from him as the dictates of a brutal heart, resolved upon the destruction of the man he was speaking to, and careless of the consequences; if you believe that, and that they were not induced by hopes or fears, then you will consider, how far they corroborate the account given by Ferris. You will consider the declarations in that point of view, whether they induce you to believe that account to be true; because you must believe that, in order to convict the prisoner; because no expressions of the most brutal disposition, even although they allude to his even acting with a party, and for a party, will be sufficient to convict the prisoner, unless you believe that party to have been, and that conspiracy to have existed with, the very persons named in the indictment, or one of them. You must believe that, and that single fact does not come from either lord Carhampton or lord Enniskillen, but from Ferris alone: he alone spoke of the names mentioned in the indictment.

Gentlemen, if upon the whole of the case, you do believe, notwithstanding the objections I have alluded to as bearing upon the credit of

* Hawk. P. C. lib. 2, c. 46, s. 3: *in notis*. See too the summing up of lord chief justice Eyre in the case of Crossfield, p. 215 of this Volume.

Ferris, from his account of the transaction, and from what you have heard from lords Carhampton and Enniskillen, without any rational doubt upon your minds, that account of Ferris to be true, and that the prisoner was involved in the conspiracy in the manner Ferris told you, then, in my apprehension, a case is made against the prisoner. But if you utterly disbelieve what Ferris has said, then notwithstanding the declarations proved by lords Carhampton and Enniskillen, in my apprehension, you ought to acquit the prisoner, I say, notwithstanding these declarations, if they do not induce you to believe the account given by Ferris.

But whether these declarations are fairly obtained, or whether the prisoner was influ-

enced by the circumstance of the noble lord being known to be armed, is all matter for your consideration. If you do believe, that these declarations were induced by hope or fear, reject them altogether; then the case stands upon the testimony of Ferris, and if upon his statement merely, you cannot safely rely upon it, then acquit the prisoner; but if you have no rational doubt, collected from the testimony of Ferris, and that it is supported by the testimony of lords Carhampton and Enniskillen, then you ought to convict him.

The jury retired for half an hour, and returned with a verdict of—Guilty.*

* See the next case.

624. Proceedings on the Trial of PATRICK CARTY for conspiring to Murder the Right Honourable Henry Lawes Luttrell, Earl of Carhampton; tried before the Court holden under a Commission of Oyer and Terminer at Dublin, on Wednesday October 25th: 38 GEORGE III. A. D. 1797.*

Wednesday, October 25th, 1797.

PATRICK CARTY was this day brought up and put to his challenges, when the panel was called over as follows:

William Thompson, esq. challenged peremptorily by the prisoner.

James Vance, esq. same.

Robert Shawe, esq. sworn.

Jeffrey Foot, esq. sworn.

Maurice Magrath, merchant challenged peremptorily by the prisoner.

Patrick Carroll, merchant, set by on the part of the crown.

Robert French, merchant, sworn.

Francis Hamilton, merchant, challenged peremptorily by the prisoner.

Arthur Keene, merchant, sworn.

Charles Williams, merchant, challenged peremptorily by the prisoner.

Alexander Stillas, merchant, sworn.

Edward Druit, merchant, challenged peremptorily by the prisoner.

William Harkness, merchant, sworn.

David Courtenay, merchant, challenged peremptorily by the prisoner.

Edward Rice, merchant, same.

John Evatt, merchant, sworn.

William Lancake, merchant, same.

Robert Neville, merchant, challenged peremptorily by the prisoner.

Richard Wilson, merchant, sworn.

Christopher Ormsby, merchant, challenged peremptorily by the prisoner.

* Reported by William Ridgeway, esq. barrister at law. See the preceding case.

Francis Brady, merchant, sworn.

Thomas Hendrick, merchant, sworn.

William Jewster, merchant, challenged peremptorily by the prisoner.

Benjamin Simpson, merchant, same.

Thomas Abbott, merchant, same.

Joshua Lacy, merchant, same.

John Campbell, merchant, same.

Ralph Shaw, merchant, same.

Alexander Pitterton, merchant, set by on the part of the crown.

William Leet, esq. challenged peremptorily by the prisoner.

David Clarke, merchant, set by on the part of the crown.

Thomas Wilkinson, merchant, sworn.

THE JURY.

Ralph Shaw,

John Evatt,

Jeffrey Foot,

William Lancake,

Robert, H. French,

Richard Wilson,

Arthur Keene,

Francis Brady,

Alexander Stillas,

Thomas Hendrick,

William Harkness,

Thomas Wilkinson.

To whom the prisoner was given in charge.

James Ferris Examined by Mr. Townshend.

Do you know the prisoner at the bar?—I do; I have seen him before.

Where did you first see him?—In Strand-street.

Was it in the street, or in a house?—At the house of a publican of the name of Maurice Dunn.

Was he alone, or in company with any and what person?—He was in company with a man of the name of James Dunn, and three

others, Peter Reilly, John Broderick, and Edward Martin.

Before you proceed farther, point out the prisoner?—This is the man.

[Here the witness produced a paper.]

What paper is that?—A paper of the names written by me as they came in.

At the time?—Yes.

This party came to the house?—Yes.

What did they do?—They were to meet a committee of seven of the persons who were at the meeting in the morning.

Did they meet that committee?—All but one.

Can you mention the names of those they met?—I can; William Carrige, James Fairweather, Garret Byrne, Thomas Byrne, and John Farrell: Hicky, one of the persons named of the committee did not attend.

They joined the company?—They did.

Be so good as to state to the Court and the jury what passed in that company in presence of the prisoner?—We adjourned to a private room at the rear of the tap-room—

Who?—The persons named, except Fairweather, who did not come until rather late.

As soon as you got into the inside room, what passed?—I was appointed chairman of the committee on that meeting.

Be so good as to state what was said by the prisoner or any one in his presence?—Thomas Byrne asked James Dunn, "Are these your friends you mentioned to me in the morning?" He said they were, and Byrne asked, if they were *straight*, or *up*, I do not know which. He said, if they were not, he would have nothing to do with them.

Who said?—Dunn said.

What was said then?—"Well now," said Thomas Byrne, "we know what we are met upon, let us proceed to business; well now let us hear your plan, Mr. Dunn."

Who said that?—Thomas Byrne.—"Why," said Dunn, "as I was telling you this morning, the way would be for us to wait behind the hedge, and then *slap* at him; I know the country well, and we can make off acrossa." Thomas Byrne did not approve of going on foot as being liable to danger; he said, "I'll tell you what I was thinking, the best way will be to go out mounted, that in case of any alarm or pursuit, we may be able to get off." That was immediately adopted, and agreed to. It was first asked, "How many ought to go upon the occasion?"

Who asked that?—I think Byrne, to the best of my recollection. It was then mentioned nine, which I made a note of—*nine number mounted*—That for some time seemed to be the prevailing opinion; however, it was mentioned by John Farrell, that no man should be exempt from going.

No man?—No man of the company then present upon an occasion of the kind; upon which Carrige one of the party, made an objection, and said, he could not attend on the Tuesday night following.

What meeting was there to be that night?

—A farther meeting of the committee to prepare and consult for the expedition.

Court.—I do not understand that; you say Carrige refused to be of the party to execute the business?—No, but that he could not attend the next meeting.

Mr. *Townshend*.—What passed then about the meeting on horseback?—Farrell having said what he did, it was agreed they should all go.

What was agreed upon?—Byrne mentioned that three at least should go on the road to Luttrellstown, disguised with loose coats, and blunderbusses, and the rest to go armed with pistols, as yeomen cavalry.

What time was appointed?—The Sunday following.

What were they to do?—The three with blunderbusses were to come behind the carriage, and fire in—

What carriage?—The post chaise in which lord Carhampton used to go out. It was also mentioned, that the footman and postillion were to be *done out*. Dunn said all the servants knew him, and it would be doing nothing without taking them off, as they would all be discovered—"And most of them know me too," said Carty the prisoner.

How was that proposal received?—It was received very well, and agreed to. The yeomen cavalry, after the three fired in, were to pass on, and fire into the windows, lest any miss should happen inside from the fire, and were to kill the postillion and footman; they were then to re-charge their pieces, keep in a body, make on towards Dublin, and keep in a body to secure their retreat, and then when they came near the skirts of the town, they were to disperse, and go different ways.—I omitted to mention, that on their coming in, they were told, that an oath of secrecy was taken in the morning, and it was necessary they should take one also, which they did.

Who said that?—Dunn.

Mention the names of those who took the oath?—John Broderick, Peter Reilly, Patrick Carty, and Edward Martin, they so having given their names to me: I never saw them before.

What Patrick Carty?—The prisoner at the bar.

After what you have mentioned, about their returning and dispersing, did any thing farther pass?—There did. It was asked by Thomas Byrne, addressing himself to Dunn—"Have any of you any arms?"—"My friend, Reilly," says Dunn, "has a blunderbuss; but for my part, I have kept no pistols in my house, since the affair of the Cornicks"—A further oath was then proposed, and taken by all present, "To be staunch, and steady, and true to one another in the business."

After the taking of the oath, was there any thing further?—There was by Byrne.

Was it in the presence of the prisoner?—

†

Yes: Byrne, addressing himself to Dunn, asked, "Did Carty live down there?" meaning Carty, the prisoner.—he said, he lived down there in the demesne, under lord Carhampton. That is all I recollect, which passed that evening. Liquor was then ordered in, and I went away.

Court.—Who was it mentioned, where Carty lived?—He himself, they were all asked where they lived.

Mr. Townsend.—Do you know any thing farther passing in the presence of the prisoner?—Not that night.

At what other time?—All that I recollect is, that I saw the prisoner at Maurice Dunn's house the Sunday morning, the day the business was to be done, the 14th of May, but I had no conversation with him. Thomas Byrne, after the business was settled, asked me if I had any arms; I told him I had not, but I would endeavour to get some, and I went to a pawnbroker.

On the Sunday morning when you saw the prisoner, was there any thing said by any one in his presence?—Not in his presence.

The party who met Dunn were a committee?—They were.

Of what body?—A body calling themselves United Irishmen. A Baronial Committee.

James Ferris cross-examined by Mr. Curran.

You are an attorney?—Yes.

Of which of the courts?—Of the King's-bench.

That is the criminal court?—The criminal court! I do not understand you.

Is this the first time of your appearing in your present character?—This is the second time I have appeared upon this table.

You are a respectable attorney?—I consider myself so.

And are generally considered so?—I do not know; I consider myself so.

You were censured?—I was, for not attending pursuant to an order for lodging an appeal.

Was there a conditional order for striking you off the roll?—Yes.

Did you ever show cause?—No; never.

How long is that order in force?—Since January last.

You never showed cause?—No.

You intend to show cause?—No, I cannot say that I do: but if I did, I dare say the person who made the charge against me will prove himself to have sworn falsely.

Then you will make a counter-charge?—No; but I say, if I did, that would be part of it, that he was not to be believed.

But you do not say you would make a charge against an innocent person?—God forbid!

Are these notes in your bosom?—No, but they are pistols.

Are they cocked?—No, but half-cocked; and it is necessary for the protection of my person.

Were you ever concerned in a cause of Kelly against Farrell?—I was.

Were you concerned for Kelly against Farrell?—I was.

Were you concerned for Farrell against Kelly?—I told you I was.

Do you now say you were?—I do.

Did you bring an action in the name of Hickson?—I did.

With his permission?—I did. I apprised him of it, and had his permission.

Did you ever deny that you did?—No.

And you brought the action of Farrell against Kelly?—Yes, by the desire of Farrell.

And you never denied that by affidavit?—No. Even if I had not apprised Hickson of it, I might issue the writ in his name, for a partnership was agreed upon a few days before, between us.

State what the cause was of Kelly against Farrell; there was a note returned by Mrs. Farrell?—I do not know.

Did you hear that Mrs. Farrell returned a note to Kelly?—I can only take it from Kelly's affidavit; I can form no belief of it; I was not present at the conversation.

Do you not believe upon your oath, that Kelly did get the note?—I am inclined to believe it.

Was not he to give Mrs. Farrell 10*l.* for restoring the note?—I am inclined to believe so.

Do you not believe, that he gave her more than 10*l.*?—I do not.

Do you not believe he gave her 10*l.*?—I do.

You were agent for him in the action against Farrell—that was to recover the balance over the 10*l.*?—It was to recover a sum of 14*l.* 15*s.* 9*d.*

Part of that was an alleged balance over the 10*l.*?—I believe it was.

Then you as agent of Kelly brought an action against Farrell for a sum, part of which was for a payment beyond the 10*l.* which Kelly made Farrell above the note?—Did you not bring an action against Kelly for recovery of that note?—I do not say it was that very note: He swore the other man was indebted to him in 100*l.*

Do you not know that an action of trover cannot be brought for a sum of money?—I do not say exactly it was an action of trover; as well as I recollect it was.

Do you not think, that such an action cannot be brought for money?—I do.

Then was not the action for the very note?—Not for the very note; it was for 100*l.*

And he had so much conscience, he did not bring the action for the paper?—He only wanted the value.

And you caused Kelly to be arrested?—He was arrested.

Did you ever swear you knew nothing of his being arrested?—I never did, upon my oath.

There was something of a rape?—I knew nothing of it; I believe there was no rape committed.

Did you ever think there was?—I never did.

Did you ever fill up a release for Kelly to Farrell?—I believe I did.

Was not that a release against a supposed rape?—I did not consider it so at that time.

Do you not believe it was a release of a rape?—I do not. I believe it was in full of all pecuniary demands on account of that business for which he was in custody.

He was in gaol for 100*l.*?—Not that I knew of.

Was any part paid, or secured?—I believe Kelly signed five notes for 10*l.* each.

And a release was given for the whole debt?—I believe at that time Kelly would not have signed the notes, unless he were released.

Did you consider Kelly in your conscience as indebted to Farrell in the entire of that note?—I did not.

You considered it a foul demand?—I did not think it an honest demand.

Was there any particular day appointed for your paying over the sum of 14*l.* 15*s.* 9*d.*?—There was.

You received that sum for the use of your client, Kelly?—I did, but he refused to make an affidavit of the debt.

Then you repaid it?—No, I did not.

You kept it yourself?—I did.

But you were determined so soon as it appears who is intitled, to pay it?—I do not say that; I suppose I will never get from under the attachment, unless I do pay it.

Did you ever swear you were ready to pay it?—I never swore any thing about it.

You filled up these five notes?—I did.

Did you ever swear you never did?—I did not.

You drew the whole of the notes except the name?—I did.

Did you ever deny it?—No.

You never denied you issued the writ against Kelly?—Never.

You never denied any part of the transaction?—I admitted there was no affidavit to ground the writ upon, and that was one of the grounds of the attachment.

That was an affidavit you swore?—No; I admitted it to Kelly.

Did you draw any examination for the rape?—Never.

You swear that?—I do, positively.

Did you see any examination?—I did not.

Where were you at the time of the drawing the notes?—In Angel-alley, High-street.

Who was with you?—I believe Farrell was.

What Farrell?—He that was prisoner.

Was Edward Smith Farrell there?—I believe he was.

Did you sign these notes by him?—I did.

Did you ever deny that upon your oath?—No.

Did you know a publican of the name of Reilly?—I did.

Did you fill a certificate of a license for him?—Never.

Did you ever see a certificate to procure a license for him with the name of sir William Worthington?—Never; I was not in the habit of procuring licenses.

Did you ever procure a license of that kind?—Never.

Did you ever sign the name William Worthington to any such license?—Never.

Had you ever a note from Coonan to Sylvester Farrell?—I had.

Did you ever write an indorsement upon that note?—Never, upon my oath.

Upon your word?—You have my answer upon my oath, and I will give you no other.

I will not press you; did you ever sign the name Edward Smith to an affidavit?—I drew an affidavit in the cause of Farrell against Handy, at the instance of Edward Smith Farrell, in the name of Edward Smith, to set aside a non-suit; I never signed the name Edward Smith to it; I gave it to Edward Smith Farrell, and he took it away, and I never saw it since.

It was from motives of mere honesty and loyalty that you became a United Irishman?—It was: to counteract their designs, if I found them inimical to the constitution of the country.

And you did so, without expectation of reward?—I considered myself bound by my oath, when I was admitted an attorney.

And under the conscionable obligation of that oath, you became an informer?—I did.

You expect no reward?—No, I have not been promised, nor do I expect any. If it were to do again, I would.

Is it not part of the attorney's oath, that you are to act fairly and justly by your client?—I think it is.

Upon your oath, do you think you acted fairly and justly to Kelly?—I did not.

Then the attorney's oath is cracked in the slings?—I will answer you fairly.

Were you ever directly, or indirectly given to understand by any body, that you would receive any reward, or acknowledgment, for the part you are now performing?—I never had a promise from mankind.

Did any body give you to understand, that you would get a reward?—Never: no man directly or indirectly made any promise, or gave me to understand—

Nor went so far, that if you acted fairly and honestly, you should have compensation?—Never, upon my oath.

Did you never expect any the least compensation?—Having had no promise, I can have no expectation.

Do you know a man of the name of Alexander Duggan?—I never saw such a man, nor do I know a man of that name.

Did you ever tell any man so?—I did not.

Did you say you knew Duggan upon your former examination?—No; I was asked last Monday in the same way, and answered that I knew no such man. If there be such a man, put him upon the table, and confront him with me.

The right hon. *Henry Lawes Luttrell*, Earl of *Carhampton*, examined by *Mr. Attorney General*.

Does your lordship know the prisoner at the bar?—I do.

Pray, my lord, what is his name?—*Patrick Carty*.

How long has your lordship known him?—I have known him since he was a very little boy.

How came your lordship acquainted with him?—His father lived under me.

Where?—Near the demesne of *Luttrellstown*; he has a house rent free.

And how was this man employed?—This man was employed, together with his father, for many years back, as constant labourer in my demesne of *Luttrellstown*.

Do you know, was the prisoner apprehended and put into confinement?—He was apprehended in my presence in consequence of the information given me by one *James Ferris*, on Sunday the 14th of May.

Had *Ferris* given you any other information against him than what he told you that day?—He had given me information of the plot against my life.

[*Mr. M'Nally*, for the prisoner, objected to this evidence.]

Mr. Attorney General.—When was the prisoner arrested?—On Sunday the 14th of May.

Was he committed to prison?—He was, in my presence.

To what prison?—To *Kilmainham*.

When did your lordship first see him after he was so committed?—After he was so committed—I saw him, I think, on the day after.

What conversation had your lordship with him at that time?—None, as I recollect.

When did you again see him?—I saw him to have conversation with him after *Dunn* had confessed.

How soon after was that? Can your lordship recollect the day?—I think it was on the Tuesday.

Where did your lordship see him then?—I saw him in the cell in which he was confined.

Who was with your lordship? or was any body?—The first time I saw him, I went in to him alone; I told him, I was well acquainted with the particulars of the plot against my life, and asked him—

Mr. M'Nally.—I am instructed to ask, whether there was any written confession, or declaration taken from the prisoner?

Mr. Attorney General.—You are misinformed; there was none at that time, and not for some days after.

Earl of Carhampton.—I can positively say, there was no information at that time; nor was it in contemplation.

Mr. M'Nally.—But I submit, if there be an information taken at any time from the prisoner, of the conspiracy, it becomes better

evidence than parol evidence, and such information excludes the parol evidence altogether: because the rule of law is, that the best evidence ought to be produced, and written information is evidence of an higher nature than a parol confession.

Mr. Justice Downes.—At present, it does not appear that any thing was written.

Mr. Attorney General.—I will save trouble. Does your lordship know, whether any examination, or confession in writing was made, or given by the prisoner upon the subject matter now examining into?—I do.

When was that examination given?—It was not given before me, but in my presence, about a fortnight after *Carty* was committed.

Do you know whether that be in existence or not?—I believe it is.

Now mention what the conversation was, which passed between you and the prisoner?

Mr. Justice Downes.—At what time was this conversation? Was it before the examination or after?

Earl of Carhampton.—The conversation I had, happened about a fortnight previous to any examination being taken, or, I believe, before any examination was in contemplation.

Mr. Attorney General.—Inform the Court and the Jury what conversation passed.

Mr. M'Nally.—The objection I make is this:—There was a conversation between the prisoner and lord *Carhampton*:—Subsequent to this there was a written examination, information, or confession, I know not which, taken by a magistrate, acting in his judicial situation, as a magistrate. That confession, or information containing the matter, or similar matter to that which had been given in conversation by parol, precludes the witness from going into the parol evidence, the former being the best evidence now which the nature of the case admits.

Mr. Attorney General.—My lords, unless your lordships think it necessary, I will not trouble you with saying a word.

Mr. M'Nally.—Lord *Carhampton* heard all that passed by parol, and he heard what was reduced to writing; the parol confession then ought not to be given in evidence.

Mr. Justice Boyd.—It is laid down, that “an express confession is where a person directly confesses the crime with which he is charged, which is the highest conviction that can be, and may be received after the plea of not guilty is recorded, notwithstanding the repugnancy; for the entry is, that the defendant *postea*, or *relicta verificatione*, *cognovit indictamentum*.”

Mr. M'Nally.—My lord, I admit that rule, but this is an exception to that rule; for here is better evidence than a declaration upon parol; for here the matter is reduced to writing; it cannot be mistaken;—words may be mistaken and misconceived; but if the written evidence be produced, the prisoner cannot controvert it by cross-examination; it is unequivocal evidence, which no

thing can alter, or do away. This precludes the general rule from operating.

Mr. Attorney General.—My Lords, in this case, I offer evidence of a conversation passing freely between the prisoner and an individual, not conversing with him as a magistrate, not exercising, or pretending to exercise any of the authorities of a magistrate.—That such evidence is admissible, no lawyer can dispute. It is the evidence upon which a conviction was had two nights since. But it is objected, that the best evidence which the nature of the case will admit must be given. The learned counsel, to sustain his argument, if it can be sustained at all, must admit, that what passed before lord Ennis-killen upon oath, is admissible evidence against the prisoner. The counsel must admit that, or he contends for nothing. Then admitting that, how is it that the evidence now offered is not the best evidence?—is it because it is not the best evidence the nature of the case admits? We are not about to give evidence by parol, what the contents of these examinations, or informations are; but we offer evidence of what passed a fortnight before—I would not be ridiculous enough to offer parol evidence of the contents of the informations reduced to writing; but we contend to offer that evidence which is uniformly received, namely, a conversation passing between the prisoner and lord Carhampton, who went to him and freely conversed with him upon two different days, at a time when examinations, or information were not in contemplation. Therefore we offer to prove that which cannot be shown by better evidence. We do not offer a single syllable of what is contained in the information. It appears, that lord Carhampton visited the prisoner two or three times, and had conversations, which tend to elucidate the charge; and now it is contended that when we have different species of evidence, applying to different periods of time, we are not to give that which is applicable to one period, because it is said to be an inferior species of evidence to that which is applicable to another. But the evidence offered is the best which the case admits of, as applicable to the period when it happened.

Mr. Justice Boyd.—Mr. Attorney General, we have no doubt, Go on with the evidence.

Mr. Justice Downes.—It appears to be simply this: Lord Carhampton's testimony is offered to prove a fact, happening upon a particular day, namely, a conversation with the prisoner. Then the objection is, that something happened afterwards which made that conversation not evidence.

Mr. Attorney General.—Mention the conversations which passed, in the order in which they did pass. But before we proceed, inform the Court and the Jury, upon the most careful recollection you can make, whether in these conversations or any of them, before they began, or during the course of them, the prisoner was impressed by you with any ex-

pectation, or hope of pardon, or whether he was impressed with any fear or terror?

Earl of Carhampton.—Whenever I do recollect, and I will take care to recollect, that I did throw out any expectation to the prisoner I will not fail to tell it. Whenever I gave him any the smallest hope, I will not fail to mention it, in the order in which it happened.

Mr. M^r Nally.—Did you at any time give, and you may answer yes or no, any expectations, or hold out any to the prisoner?

Earl of Carhampton.—I say, positively, that at the time of the conversation I am going to mention, and for many days after, it was my firm determination, not to offer to either of the prisoners upon any condition of any kind, either of confession to me, or any other, any expectation, or hope of pardon.

Mr. M^r Nally.—Do you know Dunn, the under-gaoler of Kilmainsham?

[The Court said Mr. M^r Nally was premature in extending his examination so far.]

Mr. Emmett.—I beg leave to remind your lordships of a case determined at Closswell, before one of your lordships. The evidence offered was a confession, and you permitted me, as counsel for the prisoner, to cross-examine not merely as to hopes or fears held out by the party himself; but whether hopes or fears were held out by any other person; and it appeared that a police-man had held out the expectation of the party being received as an approver, upon which your lordship was so good as to reject the evidence.

Mr. Justice Downes.—I have no recollection of the case. But the principle is this: that where a confession is offered, the counsel for the prisoner may ask under what circumstances that confession was given; whether under the circumstance which makes it inadmissible. But if the witness denies that any such circumstances did exist, the evidence is admissible to the jury, who are to determine upon the weight and effect of it.

Mr. Emmett.—My lords, I only desire to show by preliminary evidence, that there were circumstances of hope and expectation attending the confession, and though such circumstances were not occasioned by the witness, but by others, yet they render the evidence inadmissible.

Mr. Curran.—If the confession be given under an impression upon the mind of the party, no matter by whom that impression is made, the evidence is inadmissible.

Mr. Justice Downes.—I do not think the law goes so far. The prisoner may have hopes, but they may not be raised by the person to whom he makes the disclosure; in that case, they do not preclude the evidence.

Mr. Curran.—But, my lord, if the man be entrapped, no matter by whom, by one man, or another, and the disclosure is made to a different person, the evidence is still inadmissible. Suppose A. goes to the prisoner and says, "you will be hanged, unless you disco-

ver," then A. retires, and in his absence, the prisoner makes a discovery to B. such discovery is not admissible. Then we only ask the witness, whether any circumstances of hope or fear were held out by lord Carhampton, or any other person by his means.

Mr. Attorney General.—I have no objection to the question, nor am I apprehensive of the answer to it; but I do not wish to depart from the ordinary rule of proceeding in these cases.

Lord Carhampton.—My Lords, I feel myself, that if I had by myself, or any other person, caused previous hopes to be held out to the prisoner to induce him to make a confession for the purpose of bringing it into evidence afterwards against him—I say, I have that sort of feeling, that it would be an improper act; and I never did by myself, or any other person, hold out any expectation to the prisoner.

Mr. Curran.—We know his lordship did not hold out those expectations himself, or cause it to be done; but the question is, whether it was done by any other person. In a case of life, counsel are not to urge personal feelings. We want to know whether these impressions were made upon the mind of the prisoner by other persons or not.—The written declaration of a prisoner is like all other evidence; it must be proved according to law. If it be extorted by menace, it cannot be evidence, and that must be examined into before the paper is read, because otherwise an impression may be made upon the minds of the jury, not to be afterwards removed. A prisoner may be frightened into a confession, no matter by whom. Suppose a man goes to a prisoner and tells him, a magistrate will be here, and unless you confess you will suffer; and immediately after a magistrate comes, and under the impression of what was first said, the prisoner makes a declaration, surely that is not evidence. The time to inquire into these circumstances is previous to the confession being given in evidence. The question to be asked is, did the prisoner make the confession under any impression? None by me, says the witness: that is not an answer, because if it were done by any other person, the evidence is inadmissible.

Mr. Solicitor General.—My Lords, there is no insinuation, that the confession was obtained from the prisoner by collusion between the witness and any other person; if there were, the learned gentleman might have some foundation for his argument, that the evidence was inadmissible.

Mr. Justice Boyd.—Do you see any inconvenience in asking the witness, whether the party was under any impression?

Mr. Attorney General.—My Lord, as to inconvenience, I do not see any; but even suppose the under-gaoler acted as the gentlemen assert, it would not render the evidence inadmissible—for the question now is whether the evidence offered be admissible. We do

not say it is conclusive, because it may be rebutted, and the counsel for the prisoner may examine the under-gaoler. A confession may be given in evidence, and the person proving it, may know nothing of former proceedings. If there have been any former proceedings, let them be proved and go to the jury, together with the confession, who will exercise their judgment upon the whole of the evidence. But your lordships will not, without the interposition of the competent jurisdiction, try that evidence upon which the case may turn. With regard then to the admissibility of evidence, it is inconvenient to proceed in this manner. But with regard to the question of fact to be tried by the jury, I see no inconvenience.

Mr. Justice Downes.—It strikes me, that upon this objection now made, it is matter of very little consequence, whether the question be now put, or reserved till the time when the witness shall come to be cross-examined. Because I suppose this;—I cannot guess at the answer which the noble lord will give; but if his lordship said, that some person or other had held out hopes to the prisoner, that would not preclude the evidence; because the jury must consider it, and determine for themselves, whether the confession were free, or given under the influence of such impression.

Mr. Emmett.—My Lords, if it come out upon the cross-examination, that the confession were made under the impression of hope, there will not be any necessity for sending an issue to the jury. If indeed it came out upon belief, considering it a matter of doubt, then a separate issue should be sent up to the jury, to determine, whether the confession was made under the impression of hope, or fear, and according to the determination of the jury upon that issue, the evidence may be received or rejected.

Mr. Justice Downes.—I never knew an instance of that.

Mr. Solicitor General.—My lords, the latitude of the position laid down by Mr. Emmett is not reconcilable to the principles and rules of evidence, which have been hitherto received in courts of criminal justice. The position would amount to this, "That if at the time of the confession made, there existed in the mind of the person accused an impression of hope, or fear, though not proceeding from the conduct or procurement of the witness to whom the confession was made, and under examination, that such confession is not admissible evidence." And it is contended, that previous to such evidence being received, a collateral issue should go to the jury, to ascertain the truth, and reality of such impression. The novelty of such an argument, and the uniform course of examination, in similar cases, might refute the argument adduced. If the existence of such impressions in the mind were to render the confession of the person making the confession inadmissible, the confession of a guilty man could never be received. If the

unfortunate man at the bar is really guilty of the crime imputed to him, how is it possible, that his mind should have remained unagitated by hope, or fear?—Fear, like suspicion, does ever haunt the guilty mind. As to hope—it is an inseparable quality—an unalienable tenant of the mind.—It is.

—————The sick man's health—
The captive's freedom—and the beggar's wealth.

It is that which can give consolation to the most afflicted and most wretched; it clings to us whilst we are living, nor "quits us when we die." The bare existence then of those impressions cannot exclude the admissibility of the evidence; but the single preliminary question to be asked is, whether the witness, under examination, caused by himself, or by any other means, such impressions to be made, at the time of the confession, or at any other time, to procure such confession, and was such confession made freely and voluntarily, or not?

Thus, my lords, I argue as to the single point of admissibility. I say nothing as to the weight, or degree of credit that the evidence should have with the jury, under the circumstances of the case:—that is for them to determine.

The examination was then resumed.

Mr. Attorney General.—Your lordship will please to mention the conversation you had with the prisoner?—I told Carty, he was one of the last persons I should have supposed would be concerned in a plot against my life. He told me, he knew nothing of the matter; I told the prisoner I had sufficient knowledge of the fact, to convince me that it was the case, and that he was concerned in it. I told him, that Dunn had confessed the truth to me; he replied, that I then wanted no farther information from him. I asked him, if he would tell me nothing; he said, No. I went away, and desired the gaoler not to let others have access to him. Three or four days after that, Dunn came to me—

What Dunn?—The nephew of the gaoler, who is under-keeper; he came and told me, that the prisoner Carty desired to see me in the gaol: he told me, he believed the prisoner intended to tell me what he knew. Accordingly I went to the prisoner. I asked Carty if he had sent for me. He said, Yes; I asked him if he would tell me the truth now. He said, he would. He told me that Dunn led him into the plot. I asked him, how, and when? He told me, that on the Sunday preceding the Sunday on which he had been apprehended, Dunn had prevailed upon him, when he had been somewhat concerned in liquor, to go with him to a house in Strand-street; that he was there introduced by Dunn into a room where several persons were assembled, many of whom he had never seen before; that the several persons present swore

upon a book to keep secret what they were engaged to execute, namely, to shoot me, disguised in yeomen's cloaths, upon my return from Luttrellstown, upon the Sunday on which I apprehended him. I asked him, if he knew the names of the persons in the room at the time. He told me, he was acquainted with some of them, but not of all of them. I asked him, who he knew that were then present. He told me, that he knew Broderick, Martin, and Reily, and James Dunn. I asked him, if he knew a person of the name of Ferris. He said, he was told and believed, he was the head-man, or chairman, as they called him, of the meeting. I asked him, which Martin it was, because I had taken up a man of the name of Martin the evening before. He described the Martin he knew to be there to be a man of that name, a labouring man at Luttrellstown, and not the man I had taken up, whom I consequently released.—I asked him again, how it was to be executed? He told me with pistols and blunderbusses, or a blunderbuss, I cannot tell which. I asked him, what he did with himself during the week, between the Sunday that he attended that meeting, and the Sunday upon which they were to have executed that deed. He replied, that he worked in my demesne at Luttrellstown, and that he felt great uneasiness in his own mind at what he had engaged to be concerned in; that he went one afternoon in that week, after work, down to Dunn, to tell him he did not like the business, and wished to be let off. Dunn replied, as he told me, that it was out of his power to let him off; he must apply to the committee; that in consequence he thought himself bound to attend the committee on the next Sunday, and he did attend it, where he was informed, that the business was put off to another day, of which he should have notice; I left him for that time.

Was there any person present?—At that time? No. I believe outside were the under-gaoler and captain Eustace, my aid-de-camp.

Was the door open?—It was at jar.

Had you any farther conversation?—No.

Did you hold out any hopes to him?—No.

Any impressions of terror?—Certainly not.

You left him then?—Yes. I mentioned to my aid-de-camp the substance of what passed, and in about two days afterwards I went to the prisoner again, together with my aid-de-camp, captain Eustace, wishing that he likewise should hear him tell this story; the prisoner repeated before him, with hardly any variation, what he had mentioned to me before. I asked him nearly the same questions—he made nearly the same answers.

Did you upon that occasion use any ground of hope, or raise any terror in his mind?—None at all; not at that time. I afterwards sent for Carty's father—

Who was he?—I mentioned before, that he lived close to my demesne; he is a labourer and Chelsea pensioner.

What passed?—

[*Note.*—The Court asked the prisoner's counsel, whether they objected to this evidence. They answered in the negative; upon which the examination proceeded.]

I told him that his son had made the best atonement in his power for his intention against me; and had told me the truth of all that happened; and therefore you see, that your son was guilty, though you insisted upon it to me he was not; for he had told me it was impossible his son could be concerned in such a transaction; that he could not be so ungrateful. The father said, that he hoped I would not have the son hanged; that I was willing to save him, if it could be done, I told the father, but I did not see how; and the father left me that day without any hopes whatever. Three or four days after this, I told the father, that if Carty would give examinations, I was inclined to let him do so, and in that case, I thought his life might be saved, and desired the father to tell the son so—in consequence of which, the father said he was apprehensive, that if the son gave examinations, he would be murdered. I told the father, that I would protect him till the trial, and afterwards send him to England. This was on the 31st day of May, about a fortnight after the prisoner was committed.

Were or were not these the first hopes that were held out to him?—These were the first hopes I held out. On the 30th of May, I caused examinations to be drawn.

Mr. Attorney General.—My lords, I do not desire to ask any more questions, or that those examinations should be given in evidence, or to ask what the contents of them were. The man made examinations, and afterwards would not abide by them. I leave it to the Court and the prisoner's counsel to say, whether they should be read. I am inclined to think they are not admissible.

The Earl of Carhampton cross-examined by
Mr. M^r. Nally.

The first day your lordship went to Carty, he made no confession?—No.

Some days after, the deputy gaoler called, and told you the prisoner wanted to see you?—He did, and that he believed he intended to tell all he knew.

Did the under-gaoler assign any reason upon which he formed that belief?—He did not; I did not ask him; I followed him directly to the prison.

It may have come to your lordship's knowledge, that from the situation of Dunn in the gaol, he had access to the different prisoners?—He certainly has.

Then of course he had access to Carty, whenever he pleased?—Certainly.

Do you not believe, that after the first time you were with Carty, Dunn, the under-gaoler, went frequently into his cell for the purpose

of conversing with him about the conspiracy against your lordship?—I do not know what conversation he had with him.

Do you not believe, that the motive, which Dunn had for supposing Carty would confess, was that he held out hopes that he should be saved?—I believe not, and I tell why—I was apprehensive that Dunn might have held out hopes to him; therefore I asked him, whether he had by himself, or from me, held out any inducement, and Dunn assured me he had not.

A written examination has been mentioned; does your lordship know who drew that examination, or information?—I believe yes—I drew it myself, from recollection of what he told me, in the form of an examination, and I gave it to lord Enniskillen, who gave it to the prisoner, and he corrected it himself.

Do you believe that Dunn, the under-gaoler, had a knowledge, that Carty refused to confess on the first day?—I believe he had. I desired Dunn to keep the prisoner from communication with other persons, and that I was in hopes then he might be induced to confess.

Then after he refused to confess, the coercion of the gaol was increased upon him, that he might be induced to confess from the seclusion of others?—I said no such thing, because he was kept in the same manner as before.

But persons were directed to be kept from him; what was your motive in those directions?—Because I am inclined to think, that solitary confinement has often the effect, which I believe it had upon his mind, to induce people to confess; whereas a communication with others prevents it.

Then you expected that by secluding persons from him, he would confess?—I did desire when he was first committed, and before I had any conversation with him, that he might be put into a separate place of confinement.

Captain Eustace examined by Mr. Prime
Serjeant.

Do you know Patrick Carty?—I do.

Point him out?—There he is.

Did you at any time see him in the gaol of Kilmainham?—I did.

Who was with you upon that occasion?—I was with lord Carhampton.

Were you present at any conversation between lord Carhampton, and the prisoner?—I was.

Were any promises that might have raised either hope or terror made use of by lord Carhampton to induce that confession?—None that I heard.

You were within hearing?—I was.

Be so good as to detail as nearly as you recollect, the purport of the conversation?—On lord Carhampton's asking him, how it happened he should conspire against his life, the prisoner answered, and said, that on Sunday the 7th of May, being rather in liquor, he was

brought by Dunn, the smith, to the house of Maurice Dunn, the house of a publican in Strand-street; that he was there introduced to a number of persons, the names of several of whom he did not know—

Did he name any?—He named Broderick, Martin and Reilly, and Ferris (he was the chairman of the committee) and James Dunn. He said, that after he had been introduced to this company, an oath was tendered, purporting to keep secret the purpose for which they were concerned, which was, to murder lord Carhampton. He said it was to be done in yeomen's cloaths.

Was there a time and place mentioned?—He said, that the Sunday following was named for the day.

Do you recollect whether he gave any and what account of himself for the succeeding week?—He said, he had worked in the do-mesne the following week; that he had applied to Dunn to let him off.

Did he state any thing with regard to the result of that application?—He did: he said he must apply to the committee in Dublin. He said, that on the following Sunday he went to the same place in Strand-street, the house of Maurice Dunn; that the same persons were assembled there that he had seen the Sunday before, and that it was determined to postpone the execution of this murder. He also stated that on his return from that meeting he was arrested by lord Carhampton.

Did you see him on that Sunday?—I did.

Whom did you see in company with him?—James Dunn, the smith, and two others, whose names I do not recollect.

Where did you meet them?—In the Phoenix-park, returning from Dublin.

Is the park the road to Luttrellstown?—It is.

[This witness was not cross-examined. And the case was closed on the part of the crown.]

FOR THE PRISONER.

Thomas Carey produced the affidavits as in the preceding case.

John Cahill examined by Mr. Curran.

Do you know James Ferris?—I do.

Have you ever seen him write?—Very often; he was clerk to me two years.

Look at the name to that affidavit?—I am not very clear of it: I never saw him write his name in that form.

Whose writing is the body of the affidavit?—It is like Ferris's writing; but I cannot say it is.

Court.—Can you form a belief, whether it is or not?—I cannot.

James Hickson examined by Mr. Curran.

Do you know James Ferris?—I do.

Are you acquainted with his hand-writing? Is that his? [showing him the affidavit].—I believe it is Ferris's; it is very like his.

Did you ever give him permission to use your name in a case of Kelly against Farrell?—Never; he applied to me for my permission, and I refused; I would not give him permission upon any account.

James Hickson cross-examined by the Solicitor General.

The partnership between you and Ferris did not go on?—I never intended to enter into a partnership with him.

You had conversations with him upon the subject?—He applied to me about it, and I said I would consider of it; afterwards I told him I would not upon any account.

This was after the transaction respecting Kelly?—It was.

How soon after that transaction did you discover that he had used your name?—The morning after. I was told of it and was much surprised, for I had forbid him, and I told the gentleman I would immediately avow it.

Did you ever make use of Ferris's name, or act as attorney for him?—Never to my knowledge, except one time he applied to me at Kilmainham to fill a process for him.

Was the process against Ferris himself?—It was.

He employed you to fill a process against himself?—Yes.

Court.—Upon what occasion was that?—I do not know.—I believe it was to save his goods; but there was no decree made upon it.

Mr. Solicitor General.—Was there ever any process served to obtain a decree?—Upon my oath I do not know; I gave him the process.

You signed a consent for a decree?—I believe I did.

Court.—I thought you said no use was made of the process?—No use was made of it, my lord.

[The affidavit of the 3rd of February, 1797, was here read, as in former case, vide page 807.]

Edward Smith Farrell examined by Mr. Greene.

Your name is Edward Smith Farrell?—My name is Edward Farrell.

Court.—You said formerly your name was Edward Smith Farrell?—So it is; I sometimes use the name Smith, it was my mother's name.

Mr. Greene.—Do you know James Ferris?—I do.

When did your acquaintance with him commence?—Some time in 1795.

You employed him in an action of assault and false imprisonment?—I employed him and Lendrum, his partner.

What was the event?—I was nonsuited.

Was there any affidavit or writing, purporting to be an affidavit prepared for setting aside that nonsuit?—There was.

Who prepared that writing?—James Ferris.

In whose name did it purport to be sworn?—He put the name Edward Smith for it.

Did he know what Edward Smith, or tell you?—He did not say whether he did or not.

Had you any conversation with him relative to such person?—No, never.

Was there any use made of that writing afterwards?—There was a notice served upon the foot of that writing to set aside the non-suit.

Who had upon that occasion acted as the attorney?—Lendrum; for the partnership was dissolved. Ferris sent the notice by me to Lendrum to put his name to it, which he did accordingly.

Did you ever see a promissory note made by one Coonan to Sylvester Farrell, who then lived in Britain-street?—I did; Ferris had it.

Did he say for what purpose?—He said, he got it to mark a writ upon it against Coonan at the suit of Farrell.

When you first saw it was it indorsed?—It was not.

Was it indorsed in your presence?—It was by Ferris: I said it was of no use, not being stamped; but he said, it was before the stamp act.

For what purpose did he say, he wrote the name Sylvester Farrell?—He said, that the drawer might suppose I got it for payment, and I was to make the best hand I could of it.

Did he indorse it freely and at once?—No, he made three attempts upon rough paper, before he attempted the note.

Do you know Owen Reilly?—Yes, he lived in Barrack-street.

Were you in company with him and Ferris at any time with regard to a certificate?—Not in Barrack-street, but at the back of the four courts, at Morgan-place.

What did Reilly wish to have done?—I cannot tell; but Ferris filled the body of the paper.

Did it require any oath?—It was necessary to be sworn before an alderman; it was in part print, and Ferris filled up the rest in writing.

Did he fill up the entire?—Every thing except the alderman's name.

Did you see the alderman's name put to it?—He had no objection I should see him put the name; but he had an objection to the other seeing him, and he desired us both to go out, lest one should be jealous of the other.

Did you go out?—Yes.

Did you see the name after?—Yes: When I thought he had time to write the name, I tapped at the door, and he desired us to enter, and I saw the ink wet.

Do you know any thing of an action against Kelly?—Yes.

Was he in custody?—Yes.

Did he get out?—Yes.

Upon what occasion?—Upon signing five notes, and signing a release.

Who prepared that release?—Ferris.

Did you hear any thing of a rape?—Yes, VOL. XXVI,

for it was that induced Kelly to execute the notes, to get rid of the rape.

How old is he?—Sixty.

Was there any examination sworn?—No; but there was one prepared in the hand-writing of Ferris, but it was not sworn.

Was that relative to the rape?—It was.

Whom did the information charge with the offence?—Kelly.

The old man in custody?—Yes; Ferris did not appear at all, for I was his aid-du-camp in the business.

Were you to communicate with Kelly?—Yes.

What directions did you get?—To present this draft of the information, in order to bring him to a compliance to pay this sum of 50*l*.

Where was Ferris at that time?—At the house of Giles, the sheriff's-officer.

Who was in company?—The payee of the notes and his wife.

Who was the payee?—Edward Farrell.

Was there any drink?—No, the business was rather serious.

Can you undertake to say, positively, whether Ferris was privy to this charge of a rape against Kelly?—At the beginning I understood it was a fact, but afterwards I thought it was not. Farrell bid me go up to Kelly, to see if he had executed the security, which he had not, but said that if Farrell would go and get him a bond he would. Farrell said, he could not determine, until he saw his attorney. Then we went to Ferris, who said, the bond would not do, as a bill might be filed.

By general repute is Ferris a man deserving credit upon his oath?—I think not.

Edward Smith Farrell, cross-examined by Mr. *Prime Serjeant*.

How much inferior in guilt is the man who would assist in all these facts you have mentioned, to the man who would contrive them?—Why, Sir, he was my law agent, and if you had an attorney yourself, you might be led into it.

Which of the two do you think the best man?—The receiver is as bad as the thief.

You had a very good opinion of Ferris, when you employed him?—I had.

You thought him a fair man?—I thought he understood the business better than the common run.

You thought he would do your business honestly?—I thought he would do it completely.

Did you not expect he would do your business honestly and fairly?—I did.

Had you any suspicion of him, when you saw an affidavit prepared in the name of another man?—I had a suspicion, when I made no use of it.

Was not that affidavit filed?—It was.

Was that doing your business fairly, or completely?—It was.

It was a bad act?—It was; there is no harm in retracting.

3 M

You are brought here from the Marshalsea?
—Yes.

You were in Newgate?—Not for robbery.
For what?—An assault.

How long were you there?—From the 6th of April to the 6th of May.

How long have you been in the Marshalsea?
—Since that time.

Did you know Mr. Benison?—Yes.

And you know Mathew Cannon, an attorney?—I did; all honest men.

Had you any dealings with Benison?—I bought a mare from him.

How did you pay him?—He is not paid yet.

What did you give him?—A bond.

Did you give him a note?—Yes, a note of Daniel Smith of Kilcock.

Was it paid?—No; the drawer found it was an accommodation note, and he would not pay it.

Was there any other objection to it?—Yes; Smith said I put his name to it, which was false; he put it to it himself.

Were you ever at Kilcullen?—I sold a mare there for my father, I did not sell her, but offered her for sale.

What became of her?—I sent to my father, and getting a sum of money, I left her at grass there.

Was she a stolen mare?—She was not.

Was she kept as a stolen mare?—No.

Do you know a man of the name of Lawler?
—Several of that name.

Were you in gaol at the suit of a man of that name?—I was, under a *fiat*.

There was no rape in that case? how did you get out?—Putting in a rule of bail, and there was no cause shown.

Do you believe the rule was served?—I cannot tell.

Do you believe it was?—I believe it was, or I could not get out.

What is Lawler's christian name?—Thomas.

Where does he live?—I cannot tell.

Where does his father live?—In Ballynakill.

Is he married?—I cannot tell.

Did any woman live with him as his wife?
—There did.

What was the *fiat* for?—For taking away his wife.

Who was your attorney in that case?—Mathew Cannon.

Were you ever in gaol at Carlow?—I was; but not for robbery: it was an assault, and colonel Bruen mitigated my sentence.

You were present when Ferris put the name Sylvester Farrell to the note? that was doing business completely and honestly?—No.

Do you know Terence Gorman?—I did, and more than me knew him.

Did you ever do any business for him? did you ever make an affidavit for him?—No; except this, I made an affidavit of his being in actual custody, as he was.

When did you see that lady, supposed to be Lawler's wife?—I saw her to-day; but it happened to be the case that she was my wife first.

Richard Mills examined by Mr. *Emmett*.

Do you know James Ferris?—I do.

Was he attorney for you?—He was.

In what suit?—With regard to 30l.

Is he a man to be believed upon his oath in a court of justice?—I would not believe him.

Is he to be believed?—I think not; he did not act so to me.

Richard Mills cross-examined.

What way of life are you in?—A taylor, in High-street.

How long have you lived there?—Ten years, and have the neatest character for honesty of any man in the parish.

That is what you say of yourself?—It is, for I can get the first and last gentleman in the place to give me a character.

[Here the evidence closed.]

The learned Judges charged the Jury, who retired for about three quarters of an hour, and brought in a verdict—GUILTY.

These two prisoners, James Dunn, and Patrick Carty, afterwards received sentence of death, pursuant to which they were executed in Strand-street.

625. Proceedings on the Trial of PETER FINERTY, upon an Indictment for a Seditious Libel; tried at Dublin before the Honourable William Downes, one of the Justices of his Majesty's Court of King's Bench in Ireland, on Friday December 22nd : 38 GEORGE III. A. D. 1797.*

[The newspaper published at Dublin in the years 1797 and 1798, under the title of "The Press," operated during its short existence, very powerfully upon the minds of the people. The conviction and execution of William Orr on a charge of administering unlawful oaths was a topic continually brought forward and animadverted upon by the conductors of this publication. In addition to the letter of Marcus, the subject of the present prosecution, I here insert from different Numbers of "The Press," several articles relating to the case of Orr, and which are not only interesting as connected with the present trial, but also as displaying the general character of the paper.

"No. 4.—Thursday, October 5, 1797.

"We have authority to say, that the statement which appeared in the Dublin papers of Mr. Orr having made a confession of guilt, is from beginning to end false. That account originated in the Belfast News Letter, a paper generally known to be under court influence.

"There is something unutterably heinous in the meditation to ratify the doom of an unfortunate man, when under sentence of death. A forgery to this purpose, is the blackest and foulest of all forgeries. Imagination cannot conceive a more hellish malignity, than that of thus bearing false witness after trial in order to close the grasp of the executioner upon his victim.

"We understand that application was made to government, on behalf of the unfortunate Mr. Orr. An answer was given by Mr. Secretary Cooke, yesterday evening, to this effect, 'that he was sorry that, in the case of Mr. Orr, the law must take its course.'

"Notwithstanding the above unfavourable reply, there is yet room for hope. Some circumstances have transpired, which afford strong reason to suppose that the clemency of government will be extended to Mr. Orr."

"No. 5.—Saturday, October 7, 1797.

"An express has been dispatched to Carrickfergus, as we anticipated, containing an order for respiting the execution of Mr. Orr until Tuesday next.

"The case of this unfortunate gentleman is peculiarly distressing. It is attended with circumstance, which, in the minds of all candid persons must be allowed to have great weight. No motive should ever induce us to interfere with the transactions of courts and juries. But when repentant jurors come forward to impeach and invalidate their own decision; and when the fate of a man generally known and warmly esteemed in his own country, depends upon such decision, it is the duty of the press to throw every possible light on the affair.

"It appears that four of the jurors have voluntarily come forward, and made solemn affidavits to this effect, after mature deliberation: that when they had retired to their room to deliberate upon the evidence given against Mr. Orr, liquor was introduced, and instead of weighing and comparing circumstances, they proceeded to drink, and to such a degree that there was almost a general intoxication. In this state one of the jurors used threats in order to intimidate the rest. He charged them with harbouring disloyal principles, and should they refuse to join them in bringing in a verdict finding Mr. Orr GUILTY, he denounced vengeance against them. Under the intimidation thus produced in the room, the jury were led to assent to such a verdict. But the four jurors above-mentioned swear, that even the menaces made against their persons and dwellings would not have seduced them to so criminal an act, were it not for the liquor which they had taken; and from having been imposed on by a representation that Mr. Orr's life was in no danger, as their recommendation to mercy accompanying their verdict, would infallibly procure him the clemency of government. They farther swear, that in their minds the case was doubtful, which they stated even in the verdict itself.

* Reported by William Ridgeway, esq. barrister at law.

"This is the substance of an affidavit duly made in open court by four of Mr. Orr's jurors. It requires no comment. But if farther matter were wanting to induce the lord lieutenant, who is bound to administer justice in mercy, to stay the arm of the executioner, it offers in the confession of Wheatley, the principal evidence against him on the prosecution. This man has deposed on oath before a magistrate, that he felt great compunction of conscience not only for this crime which he had committed against Mr. Orr, but for other crimes, and that what he had alleged against Mr. Orr was false.

"It is far from our intention ever to become the servile panegyrists of government. But we must say, that their conduct in this respect has been such as must extort applause, as well from the public, as those whose duty it is to look with an eye of jealousy upon all their actions. Whatever the political principles of lord Camden may be, he must have imbibed just notions of equity and morals from his excellent father: and it is utterly impossible, therefore, that he can suffer the execution of a sentence to take place, which was founded on such a verdict, and that verdict in consequence of acknowledged perjury."

"No. 6.—Tuesday, October 10, 1797.

"The situation of the much abused Mr. Orr continues to interest the feelings of the public very much. We have nothing to add to the authentic statement given in our last, except that government have granted a farther respite until Saturday next; and from the propriety uniformly displayed by them in this affair, there can be no doubt of their finally exercising the best prerogative of the crown, in extending mercy to that unhappy gentleman.

"Mr. McCartney was the magistrate who brought the affidavits in Mr. Orr's case to town, and laid them before government."

"No. 7.—Thursday, October 12, 1797.

"Another respite, we rejoice to hear, has been granted to the injured Mr. Orr. In the opinion of the public, who are so particularly agitated and interested in the fate of this individual, this is an act of as much credit to government as of mercy to the man. Several prints of Dublin have copied from the Belfast News Letter, which stated that Mr. Orr had made a confession of guilt—only one of them (the Hibernian) has had the honour to retract from the error. They have lent their arm to the stroke of the assassin publicly, and they now go mooping about in the dark, and whispering every one that they meet, such was the fact.

Nothing can be more false. Mr. Orr made no such confession. An innocent or an honest man could have no such confession to make: The confessions are all on the other side. The prosecutor has confessed that he had sworn falsely; the jury have confessed that they acted inconsiderately; and for our part, we confess, that as circumstances appear should Mr. Orr suffer, going out of the world he may say in the language of 'the Messiah—Forgive them father, for they knew not what they did.'"

"No. 9.—Tuesday, October 17, 1797.

"Notwithstanding the extraordinary circumstances which occurred in the case of Mr. Orr, to arrest the arm of the law, and rescue the life of a much esteemed man from what has the appearance of a most flagitious conspiracy, we learn, with deep regret that he suffered at Carrickfergus on Saturday last.

"Since such has been the inevitable fate of Mr. Orr—since such has been the inexorable determination of those who hold the sword of justice in Ireland, what is become of that most sacred principle of coronary discretion, that brightest gem in the royal diadem, the sacred and awful duty of executing justice with mercy, that revered and invaluable axiom, so long the boast of our jurisprudence, 'that it were better an hundred *'guilty persons should escape punishment, than one innocent man should suffer,'* or what shall we say of a power so conspicuous of victims, that not even the repentant declaration of abused and prejudiced jurors, not even the remorseful acknowledgments of a perjured witness to the falsehood of his own testimony, on which the verdict against Mr. Orr reverted, cannot soothe to temperance, to mercy.

"From the tyranny and persecution of proud and unfeeling aristocracy; from military outrage, and magisterial oppression, the Irish subject still consoled himself, in the hope of an asylum under the sacred privilege of trial by jury, and looked for a sanctuary against prejudice and malevolence, even then in the benign and dispassionate exercise of royal clemency; but after the lamentable fate of Mr. Orr, who will rest on such hopes? Venerated shade of the immortal Camden, can such baleful fruits grow under the auspices of thine house, from that constitution and these laws which you have so ably taught us to revere?"

"The following is the DYING DECLARATION of Mr. Orr, as it came to us:

TO THE PUBLIC.

"My friends and countrymen; In the thirty-first year of my life, I have been

sentenced to die upon the gallows, and this sentence has been in pursuance of a verdict of twelve men, who should have been indifferently and impartially chosen; how far they have been so, I leave to that country from which they have been chosen, to determine; and how far they have discharged their duty, I leave to their God and to themselves. They have in pronouncing their verdict thought proper to recommend me as an object of humane mercy; in return, I pray to God, if they have erred, to have mercy upon them. The judge, who condemned me, humanely shed tears in uttering my sentence; but whether he did wisely, in so highly commending the wretched informer who swore away my life, I leave to his own cool reflexion, solemnly assuring him and all the world, with my dying breath, that the informer was forsworn. The law under which I suffer, is surely a severe one; may the makers and promoters of it, be justified in the integrity of their motives and the purity of their own lives; by that law, I am stamped a felon, but my heart disdains the imputation. My comfortable lot and industrious course of life, best refute the charge of being an adventurer for plunder; but if to have loved my country, to have known its wrongs, to have felt the injuries of the persecuted Catholics, and to have united with them and all other religious persuasions, in the most orderly and least sanguinary means of procuring redress; if those be felonies, I am a felon, but not otherwise. Had my counsel (for whose honourable exertions I am indebted) prevailed in their motion to have me tried for high treason, rather than under the *Insurrection law*, I should have been entitled then to a full defence, and my actions and intentions have been better vindicated; but that was refused, and I must now submit to what has passed.

"To the generous protection of my country, I leave a beloved wife, who has been constant and true to me, and whose grief for my fate has already nearly occasioned her death. I leave five living children, who have been my delight—may they love their country as I have done, and die for it, if needful.

"Lastly, a false and ungenerous publication having appeared in a newspaper, stating certain alleged confessions of guilt on my part, and thus striking at my reputation, which is dearer to me than life, I take this solemn method of contradicting that calumny: I was applied to by the high sheriff, and the rev. William Bristow, sovereign of Belfast, to make a confession of guilt, who used entreaties to that effect; this I peremptorily refused; did I think myself guilty, I should

be free to confess it, but, on the contrary, I glory in my innocence.

"I trust, that all my virtuous countrymen will bear me in their kind remembrance, and continue true and faithful to each other, as I have been to all of them. With this last wish of my heart, not doubting of the success of that cause for which I suffer, and hoping for God's merciful forgiveness of such offences as my frail nature may have at any time betrayed me into, I die in peace and charity with all mankind.

Carrickfergus Gaol, October 5, 1797.

WILLIAM ORR.

"Extract of a Letter from Carrickfergus, October 14.

"The inhabitants of this town, man, woman, and child, quit the place this day, rather than be present at the execution of their hapless countryman, Mr. Orr. Some removed to the distance of many miles.—Scarce a sentence was interchanged during the day, and every face presented a picture of the deepest melancholy, horror, and indignation. The military who attended the execution, consisted of several thousand men, horse and foot, with cannon, and a company of artillery—the whole forming a hollow square. To these Mr. Orr read his dying declaration, with a clear, strong, manly tone of voice—and his deportment was firm, unshaken, and impressive, to the last instant of his existence. He was a dissenter, of exemplary morals, and of most industrious habits; and in the characters of husband, father, and neighbour, eminently amiable and respected. The love he bore his country was pure, ardent, and disinterested; spurning all religious distinctions; and his last accents articulated the prophetic hope that Ireland would soon be emancipated."

"No. 10. Thursday October 19, 1797.

"EXACT STATEMENT of the TRIAL of MR. ORR, taken down by an eminent Stenographer.

"The public has heard much, for some time past, of the sentence upon Mr. Orr; several detailed accounts have been given of his trial, and of the circumstances attending it, all of them, in some respects, erroneous. The objections that were made to his condemnation, in point of law, had, in the opinion of many persons, considerable force; it is however, certain, that in the opinion of the very able court, that presided at his trial, they had little or no weight. There were also some circumstances, of a very peculiar and extraordinary nature, attending his conviction, which many persons have thought, if they were not of such a nature as to prevent sentence of death from be-

ing passed upon him, ought to have prevented that sentence from being carried into execution. It is, however, now very certain, that the humane and enlightened nobleman who is entrusted with the prerogative of the crown in this country, has, after much consideration, thought otherwise. It will not, we think, be unacceptable to our readers, to be presented with as faithful a summary as we have been able to collect of that trial, and particularly of the legal objections that were offered to the Court, during the course of it, and in arrest of judgment.

"Mr. Orr was indicted upon the statute of the 36th year of the present king, commonly called the Insurrection act, for having feloniously administered an oath to a man of the name of Wheatly, not to divulge the secrets of a certain society, then and there (that is at a certain time and place specified in the indictment) formed; and also for having feloniously administered an oath to the same Wheatly, not to disclose the secrets of a certain Society or brotherhood, formed under the name of United Irishmen, for seditious purposes.

"Wheatly was the first witness, and the substance of his evidence was, that he was a soldier in a fencible regiment; that he was conducted to the house of the prisoner; that the prisoner thereupon immediately sent out, and summoned a meeting of persons, who forthwith assembled at his house, and formed a committee, of which the prisoner acted as president; that the prisoner administered an oath, to be true to the brotherhood, and to keep their secrets in defiance of hope, or fear, or reward, or even death itself; that the prisoner informed him that the object of the society was, to put an end to religious differences—to restore the liberty of the country—to effect a parliamentary reform, if possible, by fair means, if not, by force; that the committee proceeded to debate on the resolution of joining the French when they should land—of providing arms for that purpose—some of which arms they showed to the witness—and of totally subverting by force of arms the constitution now established; that at the same time they showed a deep well to the witness, and asked him whether that would not be a nice place for the aristocrats.

"One other witness, he also a soldier in the same regiment, swore to the administering the oath by the prisoner; but had no recollection of the substance of it, nor of any thing particular that had passed at that committee. This was the whole substance of the evidence on the part of the prosecution.

"The counsel for the prisoner (Mr. Curran and Mr. Sampson), contended that the

Jury should be discharged of the indictment, or that they should be directed to acquit the prisoner. In support of this objection it was said, that the testimony of the informer must be supposed to be true; and if it was true, the guilt which it proved was not a crime of felony under the Insurrection act, but a crime of high treason under the statute of Edward 3rd. To meet deliberately, and resolve upon arming and joining an invading enemy, in the subversion of the constitution, might not perhaps be an overt act of compassing the king's death; but it was clearly an overt act of levying war within the 25th of Edward 3rd. This no lawyer could controvert; the charge was therefore a charge of high treason, for which the prisoner could not legally be tried under this form of indictment. A man charged with high treason in Great Britain has advantages of defence which makes it almost impossible for an innocent man to fall a victim to the mere malice of persecution; he must have a copy of the indictment; the overt acts must be expressly charged; the blasted breath of one venal informer cannot destroy him. In that country there must be two witnesses at the least. Even in Ireland, where life does not seem to be of so much value, the man accused of treason has advantages peculiar to his situation; he is entitled to an exact copy of his charge, and a full defence by his counsel in point of law and in fact. The state must avow itself as the prosecutor—it cannot wage a piratical war against his life, under false colours; and if it prosecutes him maliciously, he is authorised by his counsel to display every circumstance of his case to his jury, and of appealing to every sense of their duty, their justice, their humanity, and their danger for his protection. To try him, therefore, under this act, which gave him none of those advantages, was to try him without hearing him, and was an oppression unwarranted by the law of the land. This objection, it was said, might appear at first sight to be novel and hazardous. As to its novelty, it was the first time that such a proceeding was ever attempted, and the objection to it must be therefore new. It might certainly be thought desperate to seek a refuge from a charge of felony, under the law of treason—and it was only to be lamented that the melancholy state of the country so fully justified such a conduct.

"Lord Yelverton and judge Chamberlain overruled the objection; whereupon a man of the name of McClaverty was called by the prisoner, who contradicted expressly some parts of the evidence which Wheatly had given upon his cross-examination—in order thereby to impeach

his credit. Two or three other persons were also examined for the same purpose. The Court summed up the evidence minutely, and left the consideration of the credit due to the witnesses entirely to the jury—who retired about six in the evening to consider of their verdict.—About seven the Court adjourned. The jury sat up all night. About six in the morning the court was opened by lord Yelverton solely—and as we are informed, the Jury then required to know whether they might not find some qualified verdict, of the prisoner's having administered an unlawful oath, which should not affect the life of the prisoner.

“Lord Yelverton, as we are informed, directed them that they must find a general verdict of guilty or not guilty. We ought to mention in this place, that whether this was the precise answer which his lordship gave, or whether he accompanied it with any and what observations, we cannot presume to state with certainty, as there was no gentleman of the law present at that early hour. The jury again retired, and in some short time returned with a verdict of guilty, but recommended the prisoner to mercy. Lord Yelverton told them that he would transmit their recommendation to government, but that he could promise nothing as to its success. During the whole of the trial the silence and anxiety of a crowded audience were singularly solemn and striking; the general character of the prisoner, his numerous family, the great beauty and manliness of his person, and the quiet fortitude which he displayed, when contrasted with his accusers, seemed to excite a general interest in his favour.

“On the next day Mr. Orr was brought into Court to receive sentence, and his counsel then made a motion in arrest of judgment, which he supported upon nearly the following grounds: the indictment he said was utterly vague and uncertain; he cited Hawkins's Pleas of the Crown, vol. 2, p. 320.

“To show that in all indictments, the special manner of the whole fact ought to be set forth with such certainty, that it may judicially appear to the Court, that the indictors have not gone upon insufficient premises, he also cited the following passage from the same book, p. 354: ‘Neither doth it seem to be always sufficient to pursue the very words of the statute, unless by so doing, you fully, directly, and expressly allege the fact, in the doing or not doing whereof the offence consists, without any the least uncertainty and ambiguity; for it hath been adjudged, that an indictment for perjury on 5 Eliz. c. 9, setting forth, that the defendant *tacto*

per se sacro evangelio falso deponit, &c. is not good without directly showing that he was sworn. Also it hath been adjudged, that an information on the 18 Hen. 6, c. 17, for not abating so much of the price of wine sold, as the vessels wanted of the statute measure, is insufficient, if it do not expressly show how much they wanted. Also it is said, that an indictment on the statute of usury, setting forth, that the defendant took more than five in the hundred, is not good, without showing in particular how much.’ He insisted, that another known principle of law was, that a jury, whether grand or petit, could answer only to questions of fact, and that the Court was to answer to questions of law; the question therefore he said was, whether within those rules the present indictment was sufficient, and whether if the prisoner had demanded or pleaded guilty, the Court could pronounce judgment upon it; to examine this, he said, it was indispensably necessary to consider that the offence within the statute, upon which the present indictment was framed, was a compound offence, consisting of the administering an oath without authority, which is a misdemeanor at common law, and consisting also of the additional circumstance here charged, of its being an oath not to divulge or discover the secrets of a certain society formed, as the indictment alleges it, for seditious purposes; the former part, namely, the mere administering an oath, could not be an offence within this statute, for then the administering the obligation of a friendly brother, or free-mason, would be a capital felony within this act, which the Court had expressly denied, and which no man could be so absurd as to assert; the fact therefore which could alone touch the life of the prisoner, was whether the society in question was a society formed for seditious purposes; what, he asked, was a purpose? it might be a design good or bad already executed, or intended to be executed; but what was a seditious purpose? to answer this, it must be asked what is sedition? as a description of an offence he relied upon it, that no lawyer could, in the abstract, answer what it was.

“If any man doubted this, let him suppose a person indicted for being a seditious man, for doing a seditious act, or for engaging in a seditious purpose, without stating more; could any court of law know what sentence to pronounce upon him? Now, said he, if to allege that a man was engaged in a seditious purpose, is void, because of uncertainty, so to allege that a society was formed for seditious purposes, is equally uncertain; but it might be said, that the indictment pur-

sees the statute; but it might be said, the grand jury found that the purposes were seditious: his answer to that was, whether the purposes were seditious or not, was the very point upon which the life of his client turned, which the grand jury can find only as a matter of fact, that is by stating what the purposes were, and not as a matter of law, to which they were incompetent to answer; they should have found that it was a society formed for seditious purposes, and should have gone on and stated what those purposes were in point of fact, in order that the Court might, according to the language of the book, determine whether the indictors had or had not gone upon sufficient premises; instead of doing so, as they should have done, they had utterly suppressed the fact, and had given their opinion of its legal criminality by a term which no lawyer can understand, as the abstract for sedition may be applicable to words or to acts. Now, continued he, give me leave to ask your lordships, is the purpose stated a seditious one? I will admit that ten thousand purposes may be seditious, and I will require in return, to have it admitted to me, that there may be only one purpose not seditious. I ask how does it appear to the Court on the indictment, that the grand jury have not given the epithet of seditious to that one only purpose to which it is not applicable; I say therefore, that you can pronounce no judgment upon this indictment, unless you found your judgment upon a conclusion in matter of law, made by a grand jury, which conclusion it is not competent for them to make; and unless you also make that conclusion a ground upon which you may intend a matter of fact, which a court of law cannot do in any criminal case whatever.

"He then cited the following passage from Hawkins, vol. 2, p. 320, as an illustration of his reasoning: an indictment finding that a person hath feloniously broken prison, without showing the cause of his imprisonment, &c. by which it may appear that it was of such a nature, that the breaking might amount to felony, is insufficient. This case he insisted was directly in the point; it was a compound offence, first a breach of prison, and next a breach of prison by a person charged with a felony, in which it is not enough that a grand jury shall say it was a felonious breaking, because that would be answering to a question of law, but they must set out the fact, namely what the offence was, in order that the Court may see whether they have found upon sufficient premises. So here, he said, he relied upon it, that the grand jury should have found distinctly what the purpose was, in order that the Court might judge

whether it was seditious or not. Upon a former occasion, he said, he had heard this objection answered, by saying that the grand jury had found, that the oath was maliciously administered, but this answer he said was certainly refuted by the case he had just cited, which shows that a general averment, that a fact was of a particular nature or quality, is not sufficient in an indictment, without the finding of the very fact itself. May I be permitted, said he, having appealed to the written law, to appeal less technically to the common sense and reason of mankind. What is the statute on which you are deciding? An act made on the spur of the occasion, creating crimes and punishments heretofore unknown to our law; should it not therefore be construed with the utmost possible strictness? But what is the indictment itself? It is a charge made by a grand jury of country gentlemen, who are selected by a sheriff, who is nominated by the crown which prosecutes, and at a moment when the question of parliamentary reform has shaken the tranquillity of this country to its centre. Is it extravagant to suppose that such a jury might consider any union of men for effecting a reform as seditious? give me leave to ask how it appears from this indictment, that a mere parliamentary reform, was not the seditious purpose which the grand jury has in this case thought proper to present? He next proceeded to submit to the court, that the act itself was not in force: and first, he cited the authority of Hale and Hawkins, to show that if an offence be committed against a statute, which statute is afterwards repealed, no proceedings can be had against the offender; and he contended that there was no distinction between a statute repealed and a statute expired: they were equally the existing law, as long as they were in being, and the principle he said was applicable to both cases, namely, that the execution of all laws, is not for the sake of vengeance, but for the sake of prevention and example, which are equally inapplicable to a statute expired, as to a statute repealed. The mind of the judge he said, is the repository of the law that does exist, not of the law that did exist; nor does the mercy and justice of the law know of so disgraceful an office as a judge becoming a sort of administrator to a dead statute, and collecting the debts of blood that were due to it in its lifetime. The single question, therefore, he said, was whether the act in question was then actually expired or not, and this question turned upon the construction of the last section of the act, which says, 'this act shall be in force until the first day of January, 1797, and to the end of the

'next session of parliament, and no longer.' This act, said he, was passed in March, 1796, and was avowedly a mere experimental statute, deeply trenching upon the known principles of jurisprudence, and avowedly not intended to be permanent law; the construction therefore that abridges it, is a construction in its own spirit, and I trust I may be allowed to say that the most humane and rational of its provisions is that by which it provides for the shortness of its own duration: the words next session therefore have reference to the session in which it was passed, and mean the session which expired with the dissolution of the last parliament; it was clear, he said, that 'next session' could not mean the session next after the first of January, 1797; had that been the meaning, it would have been expressed in the ordinary way, by adding the verb of time 'then,' which would have fixed the relation of the words, 'next session' to the first of January, 1797; suppose, he said, the legislature had been asked in March 1796, how long is the statute to be in force? would it not have answered, until the end of the session after the present? had it been asked when that next session was likely to begin and to end, would it not have answered, the parliament for years past has met about the twentieth of January, the next session will therefore begin about that time, and will end early in the summer; it was therefore, he said clear, that the full time assigned to this act, in the idea of the legislature itself, was expired; but what is it, said he, that gives even a colour for contending that it is yet in force? The extraordinary and unforeseen meeting of our parliament in October last; the question is therefore simply whether a law of blood is to be kept alive by a construction founded merely upon such an event? Let it be remembered, said he, that I am not arguing in a civil case, in which a judge may conjecture, this is a criminal case, in which a reasonable doubt ought to stop the judge and save the prisoner. The Court declared, that they did not think the objections valid, and therefore refused to arrest the judgment; shortly after, and before Mr. Orr was remanded, his counsel stated, that a most extraordinary event had just come to their knowledge, and which they thought it their duty to apprise the court of; two of the jurors had made an affidavit, stating, that on the night of the trial, a considerable quantity of spirituous liquour was conveyed into the jury room, and drank by the jury, many of whom were greatly intoxicated, and threatened the two jurors who made the affidavit, and who admitted themselves also to have been in a state of in-

toxication, to prosecute them as *United Irishmen*, if they did not concur in a verdict of *guilty*; and that at length, worn out by fatigue and drink, and subdued by menaces, they did, contrary to their judgment, concur in that verdict;—here the counsel were interrupted by Mr. Justice Chamberlain, who declared that such a statement ought not to be permitted; that it was evidently calculated to throw a discredit upon the verdict, and could not be the foundation of any motion to the Court. The counsel said, that they did not mean to make it the ground of a motion; that they did intend, had the Court permitted it, to move that the jury should be punished for their misconduct; that as to discrediting the verdict, if such misconduct of the jury could discredit it, it was only justice to the public and to the prisoner that it should be discredited: that as to themselves they had discharged their duty, to the best of their judgment, and submitted. Mr. Orr was then remanded; and on the next day he was again brought up, when Lord Yelverton in a very solemn and pathetic manner pronounced sentence of death upon him; during the latter part of it, his lordship's voice was scarcely articulate, and at the close of it he burst into tears! Mr. Orr (immediately after sentence) begged leave to say a few words: my lords said he, that jury has convicted me of being a felon; my own heart tells me that their conviction is a falsehood, and that I am not a felon; if they have found me so, improperly, it is worse for them than for me—for I can forgive them. I wish to say only one word more, and that is, to declare upon this awful occasion, and in the presence of God, that the evidence against me was grossly perjured, grossly and wickedly perjured."

"No. 13. Thursday, October 26, 1797.

"TO HIS EXCELLENCY THE LORD LIEUTENANT.

"My lord;—I address your excellency on a subject as awful and interesting as any that hath engaged the feelings of this suffering country. The oppression of an individual leads to the oppression of every member in the state, as his death, however speciously palliated by forms, may lead to the death of the constitution. Your lordship already anticipates me; and your conscience has told you, that I allude to the circumstance of Mr. Orr, whose case every man has now made his own, by discovering the principle on which Mr. Pitt sent you to execute his orders in Ireland.

"The death of Mr. Orr, the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws.

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In perjury, did you not hear, my lord, the verdict was given? Perjury, accompanied with terror, as terror has marked every step of your government; vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough: against the express law of the land, not only was drink introduced to the jury, but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man than any that now surrounds you. But well may juries think themselves justified in their drunken verdicts, if debauched and drunken judges, swilling spirits on the seat of justice itself, shall set the country so *excellent* an example.

"Repentance, which is a slow virtue, hastened, however, to declare the innocence of the victim. The mischief which perjury had done, truth now stepped forward to repair; neither was she too late, had humanity formed any part of your counsels. Stung with remorse, on the return of reason, part of his jury solemnly and soberly made oath, that their verdict had been given under the unhappy influence of intimidation and drink; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God and to their country for the sin into which they had been seduced.

"The informer too, a man, it must be owned, not much famed for veracity, but stung with the like remorse, deposed that all he had formerly sworn was malicious and untrue, and that from compunction alone he was induced to make a full disclosure of his great and enormous guilt. In this confession, the wicked man had no temptation to perjury; he was not to be paid for *that*; he had not in view, like another Judas, the *thirty pieces of silver*; if he was to receive his reward, he knew he must not look for it in *this* world.

"These testimonies were followed by the solemn declaration of the dying man himself; and the approach of death is not a moment when men are given to deceive both themselves and the world; good and religious men are not apt, by perjury on their death-beds, to close the gates of heaven against themselves, like those who have no hope. But if these solemn declarations do not deserve regard, then is there no truth in justice; and though the innocence of the accused had even remained doubtful, it was your duty, my lord, and you had no exemption from that duty, to have interposed your arm, and saved him from the death that perjury, drunkenness, and reward had prepared for him.

"Let not the nation be told that you are a passive instrument in the hands of others; if passive, you be, then is your

office a shadow indeed; if an active instrument, as you ought to be, you did not perform the duty which the laws required of you—you did not exercise the prerogative of mercy—that mercy which the constitution had intrusted to you for the safety of the subject, by guarding him from the oppression of wicked men. Innocent it appears he was; his blood has been shed, and the precedent indeed is awful.

"Had Frazier and Ross been found guilty of the murder committed on a harmless and industrious peasant, lay your hand to your heart, my lord, and answer, without advisers, would you not have pardoned those ruffians? After the proof you have given of your mercy, I must suppose your clemency unbounded. Have no Orangemen, convicted on the purest evidence, been at any time pardoned? Is not their oath of blood connived at? Was not that oath manufactured at the command of power? and does not power itself discipline those brigands? But suppose the evidence of Wheatly had been true, what was the offence of Mr. Orr? Not that he had taken an oath of blood and extermination—for then he had not suffered; but that he had taken an oath of charity and of union, of humanity and of peace. He has suffered: shall we then be told, that *your* government will conciliate public opinion, or that the people will not continue to look for a better?

"Was the unhappy man respited but to torture him, to insult both justice and the nation, to carry persecution into the bosom of his wife and children? is this the prerogative of mercy? What would your father have said unto you, had he lived to witness this falling off: 'Son,' he would have said, 'I am a father; I have a daughter; I have known misfortune; the world has pitied me, and I am not ungrateful.'

"Let us explore the causes of this sanguinary destruction of the people. Is it that you are determined to revenge the regret expressed by them at the recall of your predecessor; and well knowing they will not shed tears at the departure of his successor, that you are resolved to make them weep during your stay? Yes, my lord, I repeat *during your stay*, for it may not be necessary that a royal yacht, manned and decorated for the purpose, should waft you from the shores of an angered and insulted country.

"Another cause: is it to be wondered that a successor of lord Fitzwilliam should sign the death-warrant of Mr. Orr? Mr. Pitt had learned that a merciful lord-lieutenant was unsuited to a government of violence. It was no compliment to the native clemency of a CAMDEN, that he sent you into Ireland; and what has been

our portion under the change, but massacre and rape, military murders, desolation and terror?

"Had you spared Mr. Orr, you thought perhaps the numerous families of those whom your administration had devoted, might accuse you of partiality: and thus to prove your consistency, you are content to be suspected of wanting the only quality *this country* wishes you to exercise.

"But, my lord, it will not do—though your guards and your soldiers, and your thousands and your tens of thousands, should conduct innocence to death, it will not do—a voice has cried in the wilderness; and let the deserted streets of Carrickfergus proclaim to all the world, that good men will not be intimidated, and that they are yet more numerous than your soldiers.

"We are not Domitian's people; we are not lopped at a blow; but it looks as if some fate had doomed us to be destroyed one by one, as the Persian tyrant ordered the hairs to be plucked from the tail of his beast. Beasts we have been, the vile carriers of the vilest burthens that the vilest masters could lay upon us. But the yoke is shaken: persecution has provoked to love, and *united* Ireland against foreign despotism.

"Feasting in your castle, in the midst of your myrmidons and bishops, you have little concerned yourself about the expelled and miserable cottager, whose dwelling, at the moment of your mirth, was in flames; his wife and his daughter then under the violation of some commissioned ravager; his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the hour of carousal. Under intoxicated counsels the constitution has reeled to its centre: justice herself is not only blind-drunk, but deaf, like Festus, to 'the words of soberness' and truth."

"My lord, the people of Ireland did hope that mercy would not have been denied to a most worthy and innocent man, when they understood, that one of the worst advisers and most imperious members of your cabinet, had abandoned the kingdom. Had he been of your late counsels, the odium might have been divided; at present you have the best claim to it. Let, however, the awful execution of Mr. Orr be a lesson to all unthinking juries; and let them cease to flatter themselves that the soberest recommendation of theirs and of the presiding judge, can stop the course of carnage which sanguinary, and I do not fear to say, *un-constitutional* laws have ordered to be loosed: let them remember that, like Macbeth, the servants of the crown have

waded so far in blood, that they find it easier to go on than to go back.

"I am, my Lord, your Excellency's humble servant,
MARCUS."

"No. 14.—Saturday, October 28.

"THE MARTYRED ORR.

"The actors in the foul conspiracy against the life and character of this devoted victim, are not content to let the *fatid* fame of their black actions *rot* into oblivion, but by attempting to justify themselves under specious appearances, and surreptitious testimonies, they tempt us to such investigation, as shall make

'This foul deed to smell above the earth,
'Like carrion men groaning for burial.'

To vilify the veracity of a man, honourable and upright through life, in his last and solemn dying declaration, and implicate him in the guilt of murdering his own character—to weave for his persecutors a mantle of innocence, and cover the stains of his blood indelible from their hands; a bold and flagitious assertion is made in Faulkner's Journal, and the Belfast News Letter, 'that the devoted Mr. Orr confessed his guilt, and 'acknowledged the justice of his sentence;' and to bolster this impudent lie, the letter of the honourable Chichester Skeffington, and the reverend William Bristow, is brought forward, and afterwards backed with their affidavit by way of *codicil*.

"But what do these gentlemen assert? that they came abruptly through curiosity into the cell, where Mr. Orr awaited the execution of an ignominious sentence, that was to stamp his memory with disgrace, and tear him for ever from an amiable and affectionate wife, and five darling children—and from family, friends, and connections, with whom he lived in long and mutual intercourse of esteem and respect.

"They found him, they say, reading a religious book, most probably absorbed in deep and melancholy reflexion, struggling to reconcile the feelings of nature to the dictates of religion, and to resign himself with manly calmness to his hard, hard fate.

"They protrude upon him abrupt and insulting questions—they talk to him of a paper *signed with his name*, which they saw in the hands of the sheriff, acknowledging his guilt—they congratulate him on the consoling peace of conscience such a confession must have yielded, and they state a dialogue between Mr. Orr and them, couching however their statement under this cautious SALVO, 'or words to 'that effect.'—Now let any man candidly read the answers of Mr. Orr, as stated by

them, and ask his judgment whether they do not appear to be rather the discreet and passive responses of a man in his awful situation, displeased with the cruelty and impertinence of such an obtrusion, but wishing to get rid of his visitants as civilly and as speedily as possible, rather than as any thing that could be fairly construed into a confession of guilt?

"But Mr. Skeffington—Mr. Bristow, or Mr. Anybody, may state what conversations they please with the unfortunate Mr. Orr. They have not him to confront them; for alas! he is gone 'to that bourne, from which no traveller returns.' But to his last solemn dying declaration, we will now add the declaration of his brother, as an indelible record against them.—The candid public may then be fairly asked,

'Utrum horum mavis, accipe;'

for our parts we will, as Hamlet says, 'take the Ghost's word for a thousand!'

TO THE PUBLIC.

"In consequence of seeing a paragraph in the Belfast newspaper, signed by C. Skeffington, esq. high sheriff of the county of Antrim, and the reverend William Bristow, sovereign of Belfast, relative to the declaration of my late brother, I am therefore induced, in justice to the character of my brother and myself, to lay the whole of that transaction before the public.—A few days after my brother was found guilty, and sentenced to die, I went to Belfast and applied to many gentlemen, for the purpose of using their interest to have the punishment of my brother mitigated, and in the presence of Mr. James Dickey, of Randalstown, and Mr. Thomas L. Stewart, of Belfast, I applied to Mr. Staples, a member of parliament for this county, and the hon. William John Skeffington, for the above purpose, who proposed, if I would get a written confession of guilt from my brother, that they would sign a memorial for the purpose of obtaining his pardon: and the hon. William John Skeffington said, 'he would go round the gentlemen of the Grand Jury, who were then mostly in Belfast, and get the memorial signed by them.' In consequence of which I got a written confession prepared, before I left Belfast, and produced it to the hon. William John Skeffington, and asked him if it was full enough? to which he agreed.—I accordingly went to Carrickfergus, and applied to my brother to sign the confession which I produced to him, telling him, 'if he would sign it, the above gentlemen would sign a memorial to obtain his pardon, and get the rest of the Grand Jury to do so.'—On

his reading the written confession, he declared, 'he never would consent to sign a paper acknowledging his guilt and the justice of his sentence, as he was not guilty of the crime he was charged with.'—Not being able to induce him to consent to the above, I left him; and conceiving it would be of material use, and be the means of saving his life—for this purpose, and through that view, I signed, in his name, the confession of guilt, entirely without the privacy or consent of my brother, and immediately returned to Belfast, and delivered it to the hon. William John Skeffington, as the act of my brother, with which, I believe, he went round to the above gentlemen, in order to obtain their signatures to the memorial, which they refused. This was the whole transaction, being entirely my act, and not that of my brother, as he utterly refused. This I am ready to verify upon oath.

JAMES ORR.

"Ceanfield, October 17.

"Here then the black conspiracy comes out. To execute a sentence of death, founded on a verdict impeached on the oaths of two of the jury who found it, as obtained under the influence of drunkenness and terror, and upon the evidence of a witness who, in the bitterness of his remorse, declares his perjury, would have been too unseemly a procedure, even in the pursuit of a favourite victim; and therefore an offer of mercy is held out, but the price of that mercy is to be the confession of guilt; and a brother, armed with all the force of fraternal affection, and the cries and prayers of a beloved wife and children, is sent as the advocate to exact that confession to save a brother's life. But we now see, by the testimony of that brother, that the manly and virtuous victim scorned to purchase the boon of mercy at such a price. His brother, distracted between grief and affection, supplies the defect, and subscribes to the confession of guilt, little aware, that instead of thereby saving his brother's life, he was sealing his doom.

"And this surreptitious declaration, thus swindled from the fears of an afflicted family, is made an instrument to intercept the stream of mercy, and counteract even the report of the judge who tried him, and the disposition of that executive power who is bound to execute justice with mercy."

"No. 24. Tuesday November 21.

"As the public have felt much interested in every circumstance relating to the much lamented Mr. Orr, we lay the following copy of a letter written by him, before them:

"Copy of a Letter written by William Orr, farmer, to the Lord Lieutenant.

"May it please your Excellency;—Having received from your excellency's clemency that respite from death which affords me the opportunity of humbly and sincerely thanking you, I avail myself of the indulgence of pen and paper, and of that goodness which you have already manifested towards me, to contradict a most cruel and injurious publication which has been put into the newspapers, stating that I had confessed myself guilty of the most enormous crimes, which a perjured and miserable wretch came forward to swear against me. My lord, it is not by the confession of crimes, which would render me unfit for society, that I expect to live—it is upon the strength of that innocence which I will holdly maintain with my last breath, which I have already solemnly affirmed in a declaration I thought was to have been my last, which I had directed to be published as my vindication from infamy, ten times more terrible to me than death. I know, my lord, that my own unhappy situation, the anguish of a distracted wife, and the mistaken tenderness of an affectionate brother, have been resorted to, to procure that confession: and I was given to understand my life would have been spared me upon such conditions; I as decidedly refused, as I should now, though your excellency's pardon should be the reward. Judge then, my lord, of the situation of a man, to whom life was offered upon other conditions than that of a confession both false and base. And lastly, let me make one humble observation to your excellency, that the evidence should be strong indeed to induce a conviction that an industrious man, enjoying both comfort and competence, who has lived all his life in due neighbourhood, whose character, as well as that of all his stock had been free from reproach of any kind, who certainly, if allowed to say so much for himself, would not shed the blood of any human creature, who is a husband and father of a family, would engage himself with a common soldier in any system which had for its end robbery, murder, and destruction; for such was the evidence of the unfortunate witness, Wheatly. If upon these grounds, and the facts already submitted to your excellency, I am to be pardoned, I shall not fail to entertain the most dutiful sense of gratitude, for that act of justice as well as mercy; and in the mean time humbly remain your excellency's &c. &c.

WILLIAM ORR.

"Carrickfergus Gaol,
October 10th, 1797."

"No. 30. Tuesday December 5.

"The death of Mr. Orr is a topic that should never be relinquished; and we now publish the affidavits made by three of the jurors who tried that unfortunate man. Certain as we are, that the public must feel a lively interest in every thing that concerns the sufferings of the martyred Orr, we feel ourselves happy in laying before our readers these impartial documents of his case. On these affidavits there needs no comment—they speak for themselves—and every one must allow them their full weight and importance. We forbear therefore from making any remarks upon them.

"AFFIDAVITS OF THE JURORS.

"Arthur Johnston and Archibald Tompson two of the jury who were impanelled to try William Orr, depose on the Holy Evangelists, and say, that after they had retired to their jury room to consider their verdict, two bottles of very strong whiskey spirits were conveyed into their jury room through the window thereof, and given to, and the greater part thereof drank by the said jurors, some of whom became very sick and unwell, which occasioned their vomiting before they gave their verdict. And deponent Tompson says, that he was by age and infirmity, and intimidation used to him by Mr. James McNeighton, one of said jury, induced to concur in said verdict contrary to his opinion.

"Sworn before me this 20th of September 1797, in court, YELVERTON.

"ARTHUR JOHNSTON.

"ARCH. TOMPSON.

"George Crooks, of Innischcloughlin, in the county of Antrim, farmer, maketh oath, and saith, that he, this deponent, was one of the jury who was on the trial of William Orr, who was charged with administering oaths. Deponent saith, he was resolved to acquit the same William Orr, but for the representations of some of his fellow jurors, who informed this deponent, that in case they, the said jury, should return a verdict of guilty, the said William Orr would not be punished with death. Deponent further saith, that if he had at that time known that the consequence of returning a verdict of guilty on the said William Orr would be punishable with death, he, this deponent in that case, would not have consented to such a verdict, but would have insisted and persevered in returning a verdict of the said William Orr's not being guilty.

"Sworn before me this 20th of Sept. 1797, in court,

YELVERTON.

"GEORGE CROOKS."

COMMISSION.

Friday, December 22nd, 1797.

Judge: The hon. *William Downes* [afterwards Lord Chief Justice of the Court of King's-bench.]

The grand jury of the city of Dublin at the last commission found the following bill of indictment against Peter Finerty, upon which he was then arraigned:—

County of the city of Dublin, to wit. } THE jurors for our lord the king upon their oath say and present, that at a general gaol delivery holden at Carrickfergus in and for the county of Antrim on the seventeenth day of April in the 37th year of the reign of our said lord the king before the honourable Matthias Finucane one of the justices of his majesty's court of Common Pleas in Ireland and the honourable Denis George one of the barons of his majesty's court of Exchequer in Ireland justices and commissioners of our said lord the king assigned to deliver the gaol of our said lord the king in and for the county of Antrim of the several prisoners and malefactors therein one William Orr late of Farranashane in the said county of Antrim yeoman was in lawful manner indicted for unlawfully administering a certain oath and engagement upon a book to one Hugh Wheatly which oath and engagement imported to bind the said Hugh Wheatly who then and there took the same to be of an association brotherhood and society formed for seditious purposes and also for feloniously causing procuring and seducing the said Hugh Wheatly to take an oath of the said import last mentioned and also for feloniously administering to the said Hugh Wheatly another oath importing to bind the said Hugh Wheatly not to inform or give evidence against any brother associate or confederate of a certain society then and there formed and also for feloniously causing procuring and seducing the said Hugh Wheatly to take an oath of the import last mentioned. And afterwards to wit at Carrickfergus aforesaid in the county of Antrim aforesaid before the right honourable Barry lord Yelverton lord chief baron of his majesty's court of Exchequer in Ireland and the honourable Tankerville Chamberlain one of his majesty's justices of his court of Chief Place in Ireland at a general gaol delivery holden at Carrickfergus aforesaid justices and commissioners &c. on the 16th day of September in the 37th year of the reign of our said lord the king the said William Orr by the verdict of a certain jury of the said county of Antrim between our said lord the king and the said William Orr taken of and for the felony or felonies aforesaid in due manner was tried convicted and attainted and for the same was duly executed. And that one Peter Finerty late of Mountrath street in the city and county of the city of Dublin printer well knowing the premises but being a wicked ill disposed person

and of unquiet conversation and disposition and devising and intending to molest and disturb the peace and public tranquillity of this kingdom of Ireland, and to bring and draw the trial aforesaid with the verdict thereon for our said lord the king against the said William Orr given and the due course of law in that behalf as aforesaid had into hatred and contempt and scandal with all the liege subjects of our said lord the king and to persuade and cause the subjects of our said lord the king to believe that the trial aforesaid was unduly had and that the said William Orr did undeservedly die in manner aforesaid and that his excellency John Jefferies earl Camden the lord lieutenant of this kingdom after the conviction aforesaid ought to have extended to the said William Orr his majesty's gracious pardon of the felony or felonies aforesaid and that in not so extending such pardon he the said lord lieutenant had acted inhumanly wickedly and unjustly and in a manner unworthy of the trust committed to him by our said lord the king in that behalf and that the said lord lieutenant in the government of this kingdom had acted unjustly cruelly and oppressively to his majesty's subjects therein and to fulfil and bring to effect his most wicked and detestable devices and intentions aforesaid on the 26th day of October in the 37th year of the reign of our said lord the king at Mountrath-street aforesaid in the city and county of the city of Dublin aforesaid with force and arms falsely wickedly maliciously and seditiously did print and publish and did cause and procure to be printed and published in a certain newspaper entitled "The Press" a certain false wicked malicious and seditious libel of and concerning the said trial conviction attainer and execution of the said William Orr as aforesaid and of and concerning the said lord lieutenant and his government of his kingdom, and his majesty's ministers employed by him in his government of this kingdom according to the tenor and effect following to wit: "The death of Mr. Orr" (meaning the said execution of the said William Orr) "the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws. In perjury, did you not hear my lord" (meaning the said lord lieutenant) "the verdict" (meaning the verdict aforesaid) "was given? Perjury accompanied with terror, as terror has marked every step of your government" (meaning the government of this kingdom aforesaid by the said lord lieutenant); "vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough: Against the express law of the land, not only was drink introduced to the jury (meaning the jury aforesaid) "but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man" (meaning the execution of the said William Orr) "than any that now surrounds you." (meaning the said lord lieutenant).

And in another part thereof, according to the tenor and effect following, to wit: "Repentance, which is a slow virtue, hastened however to declare the innocence of the victim." (meaning the said William Orr) "The mischief which perjury had done" (meaning the said conviction of the said William Orr) "truth now stept forward to repair; neither was she too late, had humanity formed any part of your counsels" (meaning the counsels of the said lord lieutenant). "Stung with remorse on the return of reason, part of his jury" (meaning the jury aforesaid) "solemnly and soberly made oath, that their verdict" (meaning the verdict aforesaid) "had been given under the unhappy influence of intimidation and drink; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God, and to their country, for the sin into which they had been seduced."

And in another part thereof according to the tenor and effect following to wit "and though the innocence of the accused" (meaning the said William Orr) "had even remained doubtful, it was your duty" (meaning the duty of the said lord lieutenant) "my lord, and you" (meaning the said lord lieutenant) "had no exemption from that duty, to have interposed your arm, and saved him" (meaning the said William Orr) "from the death" (meaning the execution aforesaid) "that perjury, drunkenness, and reward, had prepared for him" (meaning the said William Orr). "Let not the nation be told that you" (meaning the said lord lieutenant) "are a passive instrument in the hands of others. If passive you be, then is your office a shadow indeed: if an active instrument as you ought to be, you" (meaning the said lord lieutenant) "did not perform the duty, which the laws required of you" (meaning the said lieutenant), "you did not exercise the prerogative of mercy;—that mercy, which the constitution had entrusted to you" (meaning the said lord lieutenant) "for the safety of the subject by guarding him from the oppression of wicked men; innocent it appears he" (meaning the said William Orr) "was; his blood" (meaning the blood of the said William Orr) "has been shed, and the precedent indeed is awful."

And in another part thereof according to the tenor and effect following to wit "but suppose the evidence of Wheatly had been true, what was the offence of Mr. Orr?" (meaning the said William Orr) "not that he had taken an oath of blood and extermination, for then he had not suffered, but that he" (meaning the said William Orr) "had taken an oath of charity, and of union; of humanity and of peace; he" (meaning the said William Orr) "has suffered; shall we be then told that your government" (meaning the government of this kingdom aforesaid by the said lord lieutenant) "will conciliate public opinion, or that the people will not continue to look for a better?"

And in another part thereof according to the tenor and effect following that is to say "Is it to be wondered, that a successor of lord Fitzwilliam should sign the death-warrant of Mr. Orr?" (meaning the said William Orr) "Mr. Pitt had learned, that a merciful lord lieutenant was unsuited to a government of violence: it was no compliment to the native clemency of a Camden, that he sent you" (meaning the said lord lieutenant) into Ireland, and what has been our portion under the change, but massacre and rape, military murders, desolation and terror?"

And in another part thereof according to the tenor and effect here following that is to say "feasting in your castle, in the midst of your myrmidons and bishops, you" (meaning the said lord lieutenant) "little concerned yourself about the expelled and miserable cottager, whose dwelling at the moment of your mirth was in flames; his wife and his daughter then under the violation of some commissioned ravager; his son agonizing on the bayonet, and his helpless infants crying in vain for mercy: these are lamentations, that stain not the hour of carousal. Under intoxicated counsels;" (meaning the counsels of the said lord lieutenant) "the constitution has reeled to its centre, justice herself is not only blind drunk, but deaf, like Festus, to the words of soberness and truth."

And in another part thereof according to the tenor and effect following to wit "Let however the awful execution of Mr. Orr" (meaning the execution aforesaid of the said William Orr) "be a lesson to all unthinking juries; and let them cease to flatter themselves that the soberest recommendation of theirs, and of the presiding judge, can stop the course of carnage, which sanguinary and I do not fear to say *unconstitutional laws* have ordered to be loosed. Let them remember, that like Macbeth, the servants of the crown have waded so far in blood that they find it easier to go on than to go back." In contempt of our said lord the king and his laws and against the peace of our said lord the king his crown and dignity.

There was a second count stating merely the first paragraph of the publication.—A third count stating the second—and a fourth count stating the third paragraph.

The defendant traversed this indictment, and being this day brought to the bar, the following Jury was sworn:

James Blacker,	James Atkinson,
Benjamin Richardson,	William Cowan,
John Dickinson,	Bladen Swiny,
William Dickinson,	Mark Bloxham,
William Taylor,	William Williams,
Michael Nixon,	James King.

To whom he was given in charge.

Counsel for the Prosecution.—Mr. Attorney General [Arthur Wolfe, afterwards Viscount Kilwarden, and Lord Chief Justice of the Court of King's Bench].

Mr. Prime Serjeant [James Fitzgerald].
Mr. Solicitor General [John Toler, afterwards Lord Norbury, and Lord Chief Justice of the Court of Common Pleas]. Mr. Worthington, Mr. Townsend, Mr. Ridgeway.

Agent.—Mr. Kemmis.

Counsel for the Traverser.—Mr. Curran [afterwards Master of the Rolls.]

Mr. Fletcher [afterwards one of the Justices of the Court of Common Pleas]; Mr. McNally, Mr. Sheares, Mr. T. Sheares, Mr. Sampson, Mr. Orr.

Agent.—Mr. Dowling.

Mr. Townsend opened the Indictment.

Mr. Attorney General.—My Lord, and Gentlemen of the Jury. By the command of government, I prosecute the prisoner, upon an indictment found by the grand jury of this city, for printing and publishing a false and seditious libel. The prisoner has pleaded not guilty, and it is your duty, upon the evidence which will be given, and upon the evidence arising from the paper charged to be a libel, to determine two questions:—One a question of fact, “whether the prisoner at the bar be guilty of publishing the paper?”—and the other whether the paper itself be a seditious libel?” This second question you will determine upon a careful perusal, and examination of the paper. Previously, however, hearing, as the late statute requires, from the learned judge, his opinion whether the paper be a libel or not.

Gentlemen, the crime with which the prisoner stands charged is a mere misdemeanor; yet I must take leave to say, that no jury in modern days has been assembled upon a case of more importance to the community, than that which is now before you for your consideration.

The charge against the prisoner, is that of publishing a libel on the administration of justice—in order to render the judges and the administration of justice contemptible and odious in the eyes of the people. A libel of the most dangerous tendency. Were the object of the writer to be attained, the necessary consequence must be, the total subversion of social order, and the destruction of government.

I may lay it down as a maxim, obvious to the understanding of those who have thought, and indeed to those who have not thought upon the subject, that when a respect for the administration of justice is gone, every thing valuable is gone. Vain are laws and government when the people are taught to believe, that those laws are executed in tyranny and corruption.

The libel with the publication of which the prisoner stands charged was printed on the 26th of October last, in a newspaper published in the city of Dublin, under the title of “The Press.” It would but ill become me here to state facts not immediately pertaining to the

cause before you, and still less would it become me (if I were capable of it), to state any thing in a case of such vast importance to the community, that could affect your passions. However something prefatory I must say upon this paper, of which the man at the bar having on his oath avowed himself to be the sole proprietor and publisher, I can have no uneasiness in stating it.

This newspaper was published for the first time upon the 17th of September in the present year. An act of parliament, in order to preserve the freedom of the press by restraining its licentiousness—in order to protect the government of the country from seditious publications—in order to protect individuals from slander and defamation—requires that any man publishing a newspaper shall make an affidavit, stating the names of the proprietors and printers, and that a copy of every day's publication signed by the publisher shall be delivered at the Stamp office, in order that the publisher may be responsible to the government or the individual against whom he may offend, and that there may be evidence of the fact of publication.

On the 17th of September, the prisoner made an affidavit pursuant to the statute, by which he swore, that he was the sole proprietor, printer, and publisher of the paper styled “The Press”; and from that day to the present he has continued the sole proprietor of the paper styled “The Press.” This paper has been circulated through the kingdom with unexampled industry, and manifestly appears to arrest the attention of a government, and of every man, who has any regard for life, liberty, property, or the ancient institutions under which we are governed. I shall not go into its general and systematic tendency; I shall make such observations merely as apply to the case before you. No man, who has read “The Press,” and deliberately examined the series of papers, can fail to see that one of its great objects is, to destroy the credit of the administration, by making the people believe, that the judges, and the jurors, and all the ministers of justice are corrupt, and that a pure and equal justice is not administered.

I do not hesitate to aver, that “The Press” discloses such a system, and the publication now before you is only a part of that system, which runs through all the papers. I shall presently state the parts of the libel; but let me observe, however common-place it may be, that in performing your duty, you are called upon to protect the liberty of the press—that liberty of the press, which, while it is preserved, will preserve the freedom and constitution of this country. The freedom of the press can only be destroyed by its licentiousness, and never was there a moment in which that liberty was in more danger, never was licentiousness more extravagant.

Gentlemen, the indictment in this case does state as a matter of fact, in order to enable you to understand the nature of the libel it-

self, that a man of the name of William Orr was indicted at the assizes in the county of Antrim (at Spring assizes, 1797), for administering an unlawful oath contrary to the statute, to a person of the name of Wheatly, to be of a society formed for seditious purposes, and binding him not to give evidence against any of his brethren of that society; and the indictment farther alleges, that upon the 16th of September in the same year, William Orr was tried, and convicted, before the then judges of general gaol delivery, lord Yelverton, and Mr. Justice Chamberlain. The indictment then charges, that the prisoner at the bar, Peter Finerty, in order to bring into contempt the administration of justice in this kingdom, and to cause it to be believed that Orr undeservedly suffered death, and that he ought to have received his majesty's pardon; and that his excellency the lord lieutenant acted unjustly, inhumanly, cruelly, and oppressively, and withheld his majesty's pardon from the said Orr,—did publish this, and then the indictment sets forth those parts of the libel, that are particularly relied upon. Gentlemen, you will, after the evidence shall have been gone into, have an opportunity of viewing the whole of the libel. The indictment states only particular parts; but in the consideration of those particular parts, it will be your duty to take the whole together, and see whether the whole has that for its object, which the indictment charges.*

The indictment states, that this libel was published, of and concerning the trial, the attainder and execution of William Orr, and of and concerning the lord lieutenant of Ireland, and the ministers employed by the king in the government of this kingdom. I forbear to state any of those circumstances that attended the trial of William Orr, however desirable I may be that every circumstance attending that case should be made public, because I do not conceive such a statement to be proper upon the present occasion.

Gentlemen, the libel imports to be a letter to the lord lieutenant, published soon after the execution of William Orr, and it contains this paragraph:—

“The death of Mr. Orr the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws. In perjury, did you not hear, my lord, the verdict was given? perjury, accompanied with terror, as terror has marked every step of your government. Vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough: against the express law of the land, not only was drink introduced to the jury, but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man than any that now surrounds you.”

* The whole letter of Marous, as published in No. 13 of “The Press,” is inserted at the beginning of this Trial.

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Gentlemen, is it possible to conceive any good motive whatever, that could have induced any man to have published that sentence? It is not applicable to any question to be discussed, as a matter of theory by the public; it is not expressed in any terms, but such as must tend to excite the people to resentment—to bring the government into contempt with them. It expressly says, that the execution of Orr was the most sanguinary and savage act that disgraced the laws—founded in drunkenness and perjury. It imports that drunkenness was employed, and perjury procured to obtain the verdict against Orr! If any man—if the ingenious counsel who shall appear presently upon the part of the prisoner, can by the force of imagination put a sense upon this paragraph other than such as is calculated to excite the passions of the people upon topics not for their discussion, let him suggest it, and let the prisoner have the benefit of it—I am not able to find any sense by which discussion can be advanced—or any other than the most shameful and base charge against the servants of the state—that the government does exercise acts that disgrace the basest of the base, in order to have innocent men convicted by form of law—that the lord lieutenant and the king's ministers, in order to obtain a sanguinary and savage execution of an innocent subject, have contrived to have drunkenness introduced into the jury box, under the eye of the judges.

Gentlemen, another passage that has been selected out of the libel is this: “Repentance, which is a slow virtue, hastened however to declare the innocence of the victim. The mischief which perjury had done, truth now stepped forward to repair; neither was she too late had humanity formed any part of your counsels. Stung with remorse, on the return of reason, part of his jury solemnly and soberly made oath, that this verdict was given under the unhappy influence of intimidation and drink; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God and to their country, for the sin into which they had been seduced.” Here again, government or the lord lieutenant is charged with inhumanity, in suffering a sentence to be executed, after it clearly appeared, from affidavits the most serious and solemn, that the condemned person was innocent. Gentlemen, mercy is in the discretion of the crown—it must be upon due deliberation of the propriety of extending it (if it be extended) that it is to be granted. Now, to what end or purpose, was this paragraph introduced? Could the writer of the libel know upon what ground it was, that that royal clemency, which is ever ready to be extended to those who are objects of it, was refused to be extended in this case? To what end was this laboured paragraph composed? Was it to remedy what had happened? To what end was it circulated through the country?—To excite contempt against the ad-

ministration of justice, and to madden the people by false representations against the government.

It is stated that solemn affidavits were made—With regard to affidavits, if they were such as it was competent to the judges to attend to, we must suppose they were attended to. If others were made, the writer could not be acquainted with them. He might have known of some affidavits, but he could not know what affidavits were laid before the lord lieutenant; and not knowing them, he dared to hazard the peace of his country, by making an impression, by pretending to state transactions of which he was ignorant.

Gentlemen, it is not for me to enter into an inquiry of the truth of the facts; but I must say, that it is contrary to the principles of law, under which you are governed, to say, that a verdict of twelve men upon oath is not to be attended to, because one or two of them shall, after the trial is over, be found contrary to their oath to state, that they are not satisfied with it—I say this incidentally: we have nothing to do with it upon the present trial.

Another part of the publication is—"And though the innocence of the accused"—calling him *innocent*, who had been found guilty upon the oaths of twelve men—"And though the innocence of the accused had even remained doubtful, it was your duty, my lord, and you had no exemption from that duty, to have interposed your arm, and saved him from the death that perjury, drunkenness, and reward had prepared for him. Let not the nation be told, that you are a passive instrument in the hands of others; if passive you be, then is your office a shadow indeed; if an active instrument, as you ought to be, you did not perform the duty which the laws required of you; you did not exercise the prerogative of mercy—that mercy which the constitution had entrusted to you, for the safety of the subject, by guarding him from the oppression of wicked men. Innocent it appears he was; his blood has been shed, and the precedent indeed is awful."—Here you see this libeller has dared to assert in the face of the world, that a man tried according to the laws of his country, whose case was deliberated upon after repeated respites, that he was an *innocent* man, and that the verdict was obtained against him by drunkenness, terror, and reward!—Though this libeller, prompt as he was to say every thing false and seditious, states the affidavits which he pretends were made, he does not so much as assert, that the affidavits charge, that *reward* was given to procure the conviction; yet here he states, that it was obtained by drunkenness, terror, and reward!—Can any man in this Court, if such there be, wishing to cloath sedition with any thing they can make appear tolerable—is there any man who will dare to say, it is not libellous to assert, that a verdict has been obtained by reward?—I do not be-

lieve, that in this country, or in Great Britain, since the period when our constitution was established, any man has dared to insinuate, or thought, that the verdict of a jury in a criminal case has been obtained by reward offered, or given:—And I do in my soul believe, that the author of this libel, felt in the act of writing, that he was writing that which was false and groundless. If I dared to make an appeal of the sort, or if it became me, I would appeal to the people of the county of Antrim, who surrounded the Court—to the people assembled in the streets, to the friends of Orr—to the favourers of his party, and ask them, even at the hazard of the present prosecution, whether a man among them believed, or could be persuaded to believe, that the verdict was obtained by reward offered, held out, or given?—If this then be not a libel upon the administration of justice, I know not what a libel is; and if it be not found so, let the scales of justice fall from the hands of the judges—and yield up all you possess to a misled and distracted multitude.—To say, that a man, tried with all the advantages the law allows to prisoners charged capitally and found guilty, was sacrificed, died innocent, and suffered by a verdict obtained by reward from the executive government!—If a jury can upon their oaths find this not to be a libel, it will be time for the good and the industrious to abandon their country, and to seek protection for their lives and properties in some happier state, where government will be protected against calumny, and where there is a respect for the administration of justice.

Gentlemen, though I speak thus warmly, I mean not to excite your passions against the prisoner; I SPEAK OF THE OFFENCE; whether the prisoner be guilty, you are to judge, upon the evidence which shall be given in proof of the publication. It is impossible for any man, who has the smallest regard for his family, his friends, or his country, to read this libel, without feeling himself animated beyond the ordinary degree of temper; of warmth in such a moment I am not ashamed; it is such as should animate a man performing the most sacred duty that can be discharged.

The next paragraph, gentlemen, which has been selected is—and if one requires attention more than another, it is this—"But supposing the evidence of Wheately had been true, what was the offence of Mr. Orr? Not that he had taken an oath of blood and extermination—for then he had not suffered—but that he had taken an oath of charity and of union, of humanity and of peace." This is a libel of a new species—first to tell the world, that Orr was not guilty of the offence charged upon him—admitting it an offence, we tell the world, that the jury who convicted him were drunk—were terrified—were bribed. But then, supposing all that was sworn to be true, we tell the people, that he suffered death for taking an oath of charity and of union—insinuating to the people, that that brotherhood,

to which this case is so nearly related, is a brotherhood of charity, instituted for the benefit of mankind!

Now, gentlemen, you will observe, that the crime with which this man was charged, was not merely *administering* an unlawful oath, but administering an oath to be of a society *formed for seditious purposes*. The writer of the libel, while he wrote the paragraph which I have last read, knew he was guilty of deceit. When a man knowingly sends a falsehood to the world, he must do it for some purpose. To what purpose this was done, ask yourselves when you retire. This writer tells the public, that a man suffered death for a crime of which he was not accused, or rather for a fact of which he was innocent—The writer knew very well the crime with which the man was charged. He suppresses the truth, lest if he told the truth the people would not be sufficiently discontented.—The crime for which he suffered was not the administering an oath simply and *per se*, but an oath to be of a society *formed for seditious purposes*. It must have been charged, and proved, that he took an oath to be true to a society formed for seditious purposes; without such proof he could not have been convicted—and here the libeller, to degrade the administration of justice, tells the people that the man suffered, not for what was charged against him, but for taking a simple oath—an oath of charity and love. All that passed at that time and since too obviously proclaim the object of the libeller in that publication.

Another paragraph is this:—"Feasting in your castle, in the midst of your myrmidons and bishops, you have little concerned yourself about the expelled and miserable cottager, whose dwelling, at the moment of your mirth, was in flames; his wife and his daughter then under the violation of some commissioned ravager: his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the hour of carousal. Under intoxicated counsels the constitution has reeled to its center; justice herself is not only blind drunk, but deaf, like Festus, to the words of soberness and truth."

Here again, gentlemen, attending to the latter part, as the context of the whole, is a direct attack upon the administration of justice. She is painted as blind drunk; and the people are taught to believe, that no attention is paid to them, or to the administration of justice by the lord lieutenant, or those whom he consults respecting it.

The indictment next states this paragraph from the libel:—

"Let, however, the awful execution of Mr. Orr be a lesson to all unthinking juries; and let them cease to flatter themselves, that the soberest recommendation of theirs and of the presiding judge can stop the course of carnage, which sanguinary, and I do not fear

to say, unconstitutional laws have ordered to be loosed. Let them remember that, like Macbeth, the servants of the crown have waded so far in blood, that they find it easier to go on, than to go back."

Gentlemen, here again is a direct charge with regard to the trial of Orr. The writer desires all thinking juries to be careful how they depend upon the *recommendation of the presiding judge*, or the recommendation of juries. Leaving the people to believe, that in this case, the judge and jury had recommended this unfortunate man. With regard to the matter of fact, I abstain from saying any thing, and it would ill become me at this time and in this place, to state any thing from my own knowledge. The people are told by this paragraph, that the lord lieutenant pays no attention to the recommendation of the judge—in other words, saying to the juries who shall try criminals, "if you think them objects of mercy, and think them guilty, acquit them, lest the lord lieutenant or the king should not extend mercy to them, as they ought."—That is the wicked doctrine held out among many others. The insinuation is, that the lord lieutenant will pay no attention to the recommendation of the presiding judge, or of the jury, because he has a desire to execute the law in blood, and without mercy!

To lay it down, as a universal rule, that the lord lieutenant should pardon on every recommendation of a judge is perhaps too extensive; the circumstances of every case must be considered. The ablest judge might recommend a man to mercy, and it might be afterwards found, that he was not an object deserving of that mercy. Again, with respect to the recommendations of juries—Juries do recommend to mercy often; sometimes their recommendation is successful; oftentimes not. The extension of mercy is given by the constitution solely to the crown, or the lord lieutenant as the representative of the crown. To him upon the circumstances of the case it belongs to extend or withhold it. If one might judge from known public facts, we might suppose that much deliberation was had on Mr. Orr's case, for he was respited several times to give time for inquiry and consideration.

With regard to the charge of not attending to the recommendation of the judge, one might be bold to say, and I shall believe it, till the contrary be shown, that the crown never has refused to extend mercy to any man whom the judge presiding recommended to mercy. Can we believe that the judge in Orr's case recommended him for mercy?

Gentlemen, upon the whole of this case, you will consider whether this paper could be printed and published with any other view than that which is imputed to it.—The fact of the publication will be established by evidence, which I shall now state. I have already said, that the law requires the publisher of a newspaper, previous to publication, to set

out on oath, the names of the printers and proprietors; and also requires that a copy of every publication shall be deposited in the Stamp-office, signed with the name of him who has avowed himself the proprietor. We shall produce the affidavit made by the prisoner on the 17th of September last:—you would expect we should produce the paper deposited. The papers down to the day of the publication for which the prisoner was arrested, are deposited; all subsequent papers to the day on which the prisoner was arrested in November last but the copy for the 26th of October, and that alone, is not to be found in the Stamp-office. How it is gone—by whose means, or by what contrivance, or machination is not for me now to conjecture; but happily that defect will be supplied: we shall prove a paper bought upon that day at the place where the prisoner published his paper. So that there can be no doubt whatever of the fact of publication; and with regard to the libel, it is impossible that a man of common understanding—I know whom I address, that there is not a man among you without an understanding capable of deciding any case—but I say it is impossible for any man, regardless of the laws, the constitution, the sacred rights we have to maintain, to hesitate a moment in finding this publication a libel. Thus you will find a verdict, tending, I trust, to establish the liberty of the press, and restore with full force the administration of justice in this kingdom. I cannot better enforce some observations that I have made, than by reading to you the words of a judge of the most distinguished talents and greatest experience, acting in another kingdom, and in a case totally unconnected with party, and when passion was not excited. In the case of the King v. Watson and others, judge Buller said:—“Nothing can be of greater importance to the welfare of the public than to put a stop to the animadversions and censures which are so frequently made on courts of justice in this country. They can be of no service, and may be attended with the most mischievous consequences. Cases may happen in which the judge and the jury may be mistaken: when they are, the law has afforded a remedy; and the party injured, is entitled to pursue every method which the law allows to correct the mistake. But when a person has recourse either by a writing like the present, by publications in print, or by any other means, to calumniate the proceedings of a court of justice, the obvious tendency of it is to *weaken the administration of justice, and in consequence to sap the very foundation of the constitution itself.*” *

George Hatton, esq. sworn.

You are a commissioner of stamp duties?—Yes.

Is that your name and hand-writing?—[showing him an affidavit]. It is.

That affidavit was sworn before you?—It was.

By the prisoner?—I cannot exactly say; the room in which I took the affidavit was very dark.

George Hatton, esq. cross-examined.

Can you say positively it was sworn by the prisoner?—Not positively. I asked the man was it his name and hand-writing? He said it was.

Court.—Was it sworn before you by a man, saying his name was Peter Finerty?—It was.

[The affidavit was then read as follows;—
“The affidavit of Peter Finerty, sworn the 19th of September, 1797, before George Hatton, esq. one of the commissioners for managing the stamp duties—This deponent saith, that he is the only true, and sole printer, publisher, and proprietor of a newspaper to be published at No. 4, Church-lane, in the city of Dublin, intituled ‘The Press,’—and says that no other person, save this deponent, is a proprietor of, or has any share, or profit insaid newspaper. And saith this deponent’s true place of abode is at No. 23, Mount-rath-street, in the city of Dublin aforesaid—saith he makes this affidavit in compliance with an act of parliament, intituled ‘An Act for Securing the Liberty of ‘the Press.’”]

Mr. John Kingsbury sworn.

Have you any paper about you?—I have. Produce it? [The witness produced a newspaper].

Where did you get it?—I believe I bought—*Mr. Curran.*—Stop there, sir, that is not evid. e.

Witness.—I bought a paper with a letter signed “Marcus,” which paper I gave to my father.

Where did you buy it?—I bought this paper at No. 4, Church-lane. I gave it to my father, and he returned it to me.

That is the paper, in your hand, which your father gave back to you?—It is.

Mr. John Kingsbury cross-examined.

From whom did you buy this paper?—I do not know.

Was it from a common news-hawker?—I am positive it was not.

Why?—Because I went to the office, and bought a paper having this letter from a man in the office; I can form no belief as to the man, whether he was a servant or a clerk.

For what purpose did you buy the paper?—I bought it to read it myself.

How long after you bought it, did you give your father a paper?—I think I gave it to him that evening. I bought it as I was going to court.

How many did you lend it to before you gave it to your father?—Positively to no one.

Where was it from the time you read it, until you lent it?—In my pocket.

Where is your father?—He is in court.

Counsel for the Prosecution.—You went to buy a paper from curiosity?—Merely for my own reading: I have several times bought papers there since for my own reading.

Court.—None before?—I will not say positively, my lord.

Who was present?—I will not say there was any person, but the man in the office, who folded up the paper, and gave it into my hand.

He was not a servant?—I cannot say: I will not say, whether he was a servant, or a clerk

Did you ever make any inquiry at the Stamp-office?—I did, I went to the office to desire the attendance of Mr. L'Estrange and Mr. Hatton; Mr. L'Estrange, told me—

[The traverser's counsel objected to this.]

Did you search for the paper there?—No: Mr. L'Estrange told me he had the paper at home.

Did you ask him for it again?—On Saturday, the 9th of December, I saw him at Mr. Kemmis's—

Does he attend here as a witness?—I cannot say; I saw Dr. Harvey, who told me Mr. L'Estrange was out of his senses.

Thomas Kingsbury, esq. sworn.

Do you recollect getting a newspaper from your son?—I do.

What did you do with it?—After reading it, I put it into my desk, and locked it up.

Do you recollect about what time you got that paper?—I cannot recollect particularly; but I believe shortly after the publication; whether the day immediately after, I cannot say; it was shortly after.

You put it into a desk of your own?—I did.

Under a lock and key?—I did.

Who took it out of that desk?—I did.

You kept that key yourself?—I did.

That was a place in which you locked up other things you kept carefully?—Yes, I locked up money there.

Who was the person you gave that paper to after taking it out of the desk?—To my son, the last witness.

It was a paper importing to be a paper called "The Press"?—It was.

Do you recollect a letter in it signed Marcus?—I do; that was the reason I kept it.

Did you give it to your son, as the same person who had delivered it you?—I did.

Mr. John Kingsbury examined again.

Is the paper you produced the identical paper returned to you by your father?—It is the very paper: I got it from my father on the 9th of December, and have had it in my possession ever since.

Thomas Kingsbury, esq. cross-examined.

You locked up the paper in your desk?—I did.

In consequence of a remarkable letter?—Yes.

Did you give the paper to any other person to read that remarkable letter?—I do not recollect I did.

There are some persons in your house, that you might have given it to read?—No; the persons in my house are mostly daughters.

Can you say positively you did not lend it?—I take upon me to say, it was not out of my sight; if I gave it to any person, it was in the room where my family were sitting, and it was not out of my sight till I locked it up.

Mr. M^cNally.—My lord, I object to this paper being read. There is an act of parliament in this kingdom for protecting the liberty of the press, and by that act every printer is obliged to deposit with the officer of stamps a copy of each publication.

Mr. Justice Downes.—You do not mean to say, Mr. M^cNally, that no other species of evidence of publication is admissible, but that mentioned in the act?

Mr. M^cNally.—No, my lord? but the statute creates a superior species of evidence. The statute shows the intention of the legislature: it is for securing the liberty of the press, and that the press may not be prosecuted upon vague and improper grounds.

Mr. Justice Downes.—Do you mean to contend that there is no evidence to go to a jury?

Mr. M^cNally.—My lord, I mean to say that the best evidence which the nature of the case admits, and which the law requires, is not given.

[The Court directed the paper to be read.]

Mr. M^cNally desired to have the record, to compare it with the paper, while the officer was reading it.

Mr. Justice Downes.—The officer may have the record in his hand and compare it, while another person reads the paper:—But the officer cannot part with the custody of the record, you or your agent may look over the record while the officer reads it.

Mr. M^cNally.—It is the constant practice in England, upon trials for libels, to let the defendants counsel inspect the record. I never knew it refused.

[It was at length agreed, that the traverser's agent might set beside the officer, and see the record compared.]

The letter signed "Marcus" was then read from the paper by the clerk of the crown, while his deputy held the record, and compared it.]

Walter Bourne, esq. examined.

What office do you hold?—Deputy clerk of the crown for the county of Antrim.

Have you the custody of the criminal records of that county?—I have.

What is that in your hand?—The record of the conviction of William Orr.

Is it the original record?—It is.

[A part of this record was read, for form's sake, the traverser's counsel not desiring to have the whole read.]

Here the case was rested for the crown.

Mr. Fletcher.—My lord, I am counsel for the traverser, and I would just state a preliminary objection that strikes my understanding, not with a view of preventing the counsel for the crown from supplying the defect, if they can.—The evidence to prove the fact of publication consists of this: A witness was produced on the part of the crown, who swore, that an individual, calling himself by the name of the traverser, did swear an affidavit which was lodged in the office. I did not understand, from the evidence, that he proved either one or other of these two things; namely, that he was convinced in his conscience, that the traverser is the individual Peter Finerty, who swore the affidavit, or what, I admit, might be evidence to go in substitution, that the signature to the affidavit purported to be the hand-writing of the traverser, or that he believed it to be the hand-writing of the traverser.

Under these circumstances, my lord, I contend, that the legislature having pointed out a particular kind of evidence, in a case of all others liable to error, bringing home the fact to the party accused; that kind of evidence has not been produced here; but to lay a ground for the substitution of inferior evidence, it strikes my humble understanding, that they ought to have gone a step farther; because otherwise it would be manifest, that in times like the present, it is not impossible, that any individual in the community calling himself Peter Finerty might offer himself at the Stamp-office—offer an affidavit and sign his name, when he was not Peter Finerty at all. If the commissioner had gone farther, and said he believed the hand-writing to be that of the traverser, I should be inclined to believe, it would be evidence for the jury. But the evidence offered is the lowest that imagination can conceive; for it amounts to no more than that a man calling himself Peter Finerty, offered himself at the Stamp-office, and signed a name purporting to be the name of Peter Finerty; but where is the evidence bringing it to the traverser? Which appropriates it to him?—And surely, my lord, in a case, of this kind, which has been stated as a case the most flagitious, *a multo fortiori* is it necessary, that the proof should be brought home, and if the traverser be convicted it should be upon satisfactory evidence.—I merely, state this my lord, and shall sit down to wait the opinion of the Court.

Mr. Curran.—I trust, my lord, you do not think it necessary for me to add any thing to

what has been said by Mr. Fletcher. I take it, my lord, that in all cases there must be some evidence of the identity of the prisoner.—An affidavit has been read, purporting to be made by some person calling himself Peter Finerty. What evidence is there that it was made by the traverser? The evidence offered is to show that he is proprietor of the Printing-office, No. 4, Church-lane. His declaration of that would be evidence against him, because it would be an admission against himself. Now, suppose there were no affidavit; but a witness said a man came to me, said his name was Peter Finerty, that he lived at No. 4, Church-lane, and that he was the printer of "The Press?" All that might be true: a person might have told that to the witness; but what that person said may not be true. There must be some evidence to satisfy the jury that the traverser was the person who made that declaration. It is evident, that any man in human society might have gone to the office. He is asked who he is—"I am Peter Finerty;"—is that evidence, unless it appears it was the traverser?—Suppose the common case of a promissory note; a man is sued upon it. The witness is asked, do you know the defendant?—no. His hand-writing?—no; but somebody said it was signed by Finerty, and he is the defendant. Is it not as necessary to prove the identity in a criminal, as in a civil case? Would you in a civil bill give a decree upon evidence, that somebody said the defendant signed the note, without showing, that it was the defendant? I do not find any evidence of that kind here, and I thought it idle to enter into a fencing upon a subject of this kind, or to interpose with the order which the counsel for the crown might be desirous of pursuing. But, I trust your lordship will think it one of the first principles of law, that no man can be affected, either civilly as upon a contract, or criminally as upon a delinquency, unless there be some evidence that he is the person against whom the contract is alleged, or the criminality advanced. The evidence here is, nakedly, that somebody or other, whom the witness does not know, did swear that affidavit. I do not know that the law of this country does appropriate a name to the single use of any individual. I have not heard of any monopoly of that kind. Suppose all that the commissioner said to have been true; suppose the man who went, really bore the name of Peter Finerty; may there not be two, or ten persons of the same name? Is a man then to be criminally responsible upon a verdict by a jury, by which they establish, that some man of the name did a particular act, no matter who he is?—Because if your lordship let this go to the jury, as sufficient evidence, they will think, if all the other parts be established, that there is no doubt of the identity, and they will give a verdict charging some man of the name of Peter Finerty.—But is there any evidence whatever, that the

Peter Finerty was the man now upon trial at the bar?

Mr. Justice *Downes*.—Do you propose to do any thing more, Mr. Attorney General?

Mr. Attorney General. —My lord, it strikes me there is evidence to go to the jury;—However we will give farther evidence.

George Hatton, esq. again examined.

Do you know the prisoner?—I believe him to be the man who swore the affidavit.

Mr. Curran. —Sir, you cannot give that evidence.

Counsel for the Prosecution. —How was he dressed?—He had a great coat, and appeared as if he came from printing.

Mr. Curran. —I am sorry to see an attempt of this kind to supply evidence which is defective.

Major Sirr sworn.

Do you know Peter Finerty?—I do.

Point him out?—There he is [pointing to the traverser].

Do you recollect having arrested that prisoner?—I do.

Upon what day?—I do not recollect the exact day.

In what month?—It was during the sitting of the last commission.

Where did you arrest the prisoner?—At an office, called the Press-office, in Church-lane.

What number?—Number 4, Church-lane.

Had you any conversation with the prisoner at that time?—I had.

State what it was?—I asked him if his name was Peter Finerty.

Mr. Curran. —I trust the counsel will have the candour to mention what is the evidence which they intend to give; that if there be any objection to it, we may make it.

Mr. Townsend. —I am going to give evidence of declarations made by the prisoner; and to render them admissible, I will ask a preliminary question. Was the prisoner induced by hopes or fears to make any declaration to you?

[The counsel for the traverser objected to this question.]

Mr. Townsend. —If there be no objection to the witness hearing me, I will state the evidence we mean to give. I am instructed, that major Sirr took the prisoner in Church-lane, and that he did there confess he was the printer of the paper.

Mr. M^cNally. —I beg leave to state an authority.—In 5 Mod. 165. Lord Holt held, upon trial of an information for a libel, "that if a confession shall be taken as evidence to convict the party, it is but justice and reason, and so allowed in the civil law, that his whole confession shall be evidence, as well for as against him, and then there will be no proof of a malicious and seditious publication."

Mr. Justice *Downes*. —To be sure, the whole declaration must go to the jury.

Mention what the conversation was, which

you had with the prisoner?—I asked him whether his name was Peter Finerty, and whether he was the publisher of the "The Press." He told me that he was.

Is that the man at the bar?—He is.

Did you ask him one or two questions?—I asked him first, was his name Peter Finerty.

Did he answer?—He did; he said his name was Peter Finerty.

Then you asked him a farther question?—I did; I asked him was he the publisher of "The Press;" he said he was.

Major Sirr cross-examined.

Who was present at that conversation?—Three or four people, I think.

Can you name them?—I cannot; I would know one of them, if I saw him.

Did you ask him, if he was the person who signed the affidavit?—I knew nothing of the affidavit.

Did you ask him, was he the author of the paper signed Marcus?—I did not.

You do not know any of the persons who were there?—No.

Had you a warrant?—I had.

Did you go singly?—No, I had a man with me.

What is his name?—Mitchell.

Where does he live?—In Ship-street.

Of what business is he?—I do not know.

You know him, without knowing what he is?—He is an evidence for the crown.

Was this before or after the publication signed Marcus?—I do not know; I received a warrant, and executed it.

Can you fix the time, whether it was before or after?—I cannot be positive.

What did you do with Finerty?—I brought him to the Castle-yard, and had him escorted to Newgate.

You are a zealous advocate for the freedom of the press; have you taken any steps to restrain its licentiousness? Are you the person who chased a carrier of "The Press" with a drawn sword?

Mr. Justice *Downes*. —The witness is not bound to answer that question, if he do not choose it.

Witness. —I never did.

The Court tells you, that you may answer the question, if you choose?—I say, I did not.

Did you see any person stop a carrier of "The Press"?—No.

Were you present when Finerty was taken out of Newgate, and brought to alderman Alexander's in the night time?—No.

Do you know, whether "The Press" is a paper in the pay of government, or the treasury?—I should imagine not.

Are there not other papers in the pay of government?

Mr. Justice *Downes*. —I do not see that this examination is material to the present case.

Mr. Sampson. —My lord, it is my duty to submit to the Court:—But if I think the

question may be material, I hope I shall be heard. I do not wish to shut out any light which may assist the discretion of the jury upon the decision of this most important question.

Mr. Curran.—My lord, we conceive the evidence to be admissible in this way. This is a prosecution avowedly carried on by the state, and the jury being entire judges altogether upon the entire fact, it may not be immaterial for them to know, whether the government which prosecutes this paper, does not itself employ papers on its own behalf.

Mr. Sampson.—I thank Mr. Curran. My lord, I conceive, there is no right to praise falsely, or to censure without justice.

Mr. Townsend.—If this were a Court-martial, which could enforce retribution, or acknowledgment of improper conduct, there might be some foundation for the question which has been put.

Mr. Justice Downes.—What is your question, Mr. Sampson?

Mr. Sampson.—My lord, my questions are so many, that I cannot tell them, but in the order in which I shall put them to the witness.

Mr. Justice Downes.—Put your question.

Mr. Sampson.—I ask the witness, whether there are not papers in the pay of government?

Mr. Townsend.—I object to that question.

Mr. Curran.—The conduct of the government is the subject of the examination in this paper.

Mr. Justice Downes.—This Court does not sit to inquire into the conduct of government.

Mr. Curran.—The statement of the counsel has gone into a history of the government for years back, and I do not say it was improper. But I beg leave to shelter the question now put under the authority of that proceeding.

Mr. Attorney General.—My lord, I do object to this question. I do avow, that on the part of the government I prosecute this man at the bar, for an atrocious libel; and by way of defending this man, who has pleaded, not guilty, they say, that the ministers have done something wrong. The avowal of the counsel is this, that they will examine to show, that government pays a paper, and publishes libels against other people, and upon that ground, they hope in a country, where a little yet remains, to influence the jury. They want to show that crimes are committed by government. Undoubtedly, some of the members of the government may commit crimes, and may publish libels. Let them be punished for it, if the fact be so. But is the guilt of the man at the bar to be done away by the crimes of others? My lord, I object to the question, on account of the law, on account of practice, and because it would be inquiring into the conduct of others not upon their trial.

Mr. Sampson.—My lord, I have not yet had an opportunity of laying my sentiments

before the Court. My respect for the attorney general prevented me from interrupting him. It is a rule of law, my lord, observed by all counsel, and God forbid, there should be one rule for the counsel for the prisoner, and another rule for the counsel for the prosecution, —I say, it is a rule to state, what they intend to prove. It was stated by the attorney general, that this paper was part of a system, and he has introduced invocations to God, and called upon the passions of the jury. My lord, we do not live in a country—and I ought to respect the law and the judges, when I say so—where non-resistance is the doctrine of the law—in a country where it is treason—

Mr. Justice Downes.—Speak to the point.

Mr. Sampson.—My lord, the point is this, that the attorney-general has made it part of his case, that "The Press," was a part of a vile system. I want to show it is no such thing, and by showing, that there are papers free to say what they choose on one side, it is vain to say, the press is free, if it be put down on the other. It is nothing but a fair system, to oppose argument by argument—assertion by assertion, and invective by invective, with this only difficulty, that it has no men in arms to assist it, and can only be defended by paper shot.

Mr. Justice Downes.—This is not arguing a point of law.

Mr. Sampson.—I wish to ask the witness, whether he believes there is any paper in the pay of the treasury.

Mr. Justice Downes.—That is a question not at all relevant to the case before the jury, and should not be asked.

Did you ever hear of the Northern Star being put down by the soldiery?—I have heard it.

[This examination was objected to.]

Mr. Fletcher.—My lord, with great respect, we, who are to defend the traverser, suppose that malice and sedition are charged to be the objects of the libel. The jury are judges of the object and the motives of the publication—we are apprized, that it is stated to be a false and malicious libel against the government, and that it is part of a system formed to bring the administration into contempt, and to dissolve the government. We suppose, my lord, that the guilty conduct of that paper, such as it is, and the intentions of it, are before the jury, now competent to determine what is legal evidence against him and what is not. The time is gone by, my lord, when any person sitting where your lordship does, was to pronounce whether the matter was libellous, or not. Now, my lord, to show this paper to be a libel, it must be shown, that it is malicious and false, and then sedition follows, in common sense and in contemplation of law. Now, the question is, whether this man, being indicted as the printer and publisher of a paper, may be calumniated by persons, not

warranted by the highest executive authority, but by subordinate officers? Suppose that to be the fact; is not the evidence now offered, apposite to the *quo animo*?—Is it, or is it not? In any case whatsoever—suppose it was a case of murder; would not every thing elucidating the intention of the man, supposed to be guilty of homicide, be evidence? Would not every act of the party slain tending to provoke, be evidence? Does not malice always arise whenever it appears, from a mass of evidence of that kind? If two persons meet—one is roughly treated—grossly injured—words arise—one strikes—another returns—is not all that evidence to go to the jury?—So in a case of libel; there is a distinction between private slander and public censure. This is no indictment for attacking a private bosom-friend, and dragging into public view, his conduct in private life; his family connexions, with which the public have nothing to do: therefore this is not a prosecution for private slander, but the kind of libel, now the subject of inquiry, is stated to be, for calumniating the state. Is not the liberty of the press; the wholesome liberty of the press, in every government to be supported? And is not therefore the *quo animo* of the party the very pith and marrow of the prosecution? How can the jury say, whether this libel be false and malicious, and draw from that the inference of seditious, except they follow the attorney-general, and believe, that the man, who wrote this libel, did it with malice prepensed, knowing the matter to be false? But if, on the contrary, it comes out, that there are other papers, using provoking language and expressions of this kind, does it not go to the *quo animo* with which the fact of publication was done?

Mr. Justice *Downes*.—It all comes to this, that various libels are published in other papers.

Mr. *Fletcher*.—No, my lord. The question is, whether papers are published? We do not say *libels*.

Mr. Justice *Downes*.—I conceive that to be utterly immaterial to this case.

Mr. *Fletcher*.—Suppose, my lord, this was an information, at the suit of an individual, grounded upon a letter containing much slanderous matter—would it not be evidence to show another letter written to the accused antecedent to the letter sent by him?—We, who are concerned for the traverser, in our humble judgments conceive, that every thing tending to show the intention, even though that intention should be erroneous, is evidence. A man may in error, but *bona fide*, publish matter against government; but the jury are to determine the *quo animo* with which it was published. I call your lordship's attention to the letter written by Junius to his majesty:—The jury, before the act of parliament upon the subject of libels, brought in a verdict against the printer, Guilty of publishing only:—there was a contest with respect to

the verdict, and that case actually produced the act of parliament. The jury would not find any guilty intention. In this case, how can your lordship say, what effect it may have upon the jury, as to the question of intention? Or suppose this to be the fact—the gentlemen concerned for the crown may waive any thing in their own favour: suppose the jury were, from the resistance of those gentlemen, to be of opinion, that government did employ papers to do to the country, what it is said, this paper has done to the state, can your lordship tell, whether that may not be matter for the exercise of the judgment of the jury upon the *quo animo*? Will it not show the kind of view with which prosecutions of this kind are brought forward?—The provocation, if any, arising, not from this paper, but from others. Will not that go to the point, which under the act of parliament the jury are to try? We think, that every thing which can be brought, in the judgment of the jury, to bear upon the mind of the party accused in doing the fact charged against him, is applicable to the present case.

Mr. Justice *Downes*.—Do you examine any farther?

Mr. *Sampson*.—Your lordship decides against the question?

Mr. Justice *Downes*.—I have.

Mr. *Sampson*.—My lord, I submit:—I will ask another question.

Did you at any time seize a parcel of these papers intituled "The Press?"—I will not answer that question, unless I am told that I must.

Mr. *Prime Serjeant*.—The answer to that question may criminate himself.

Mr. Justice *Downes*.—The witness must be the judge, whether it tends to criminate himself.

Mr. *Sampson*.—Major Sirr, you are to judge, whether the answer will tend to criminate yourself; and the question is, did you ever seize any papers intituled "The Press?"—I will not answer.

Do you hold any office under government?—No.

What office do you hold?—Deputy town major.

Are you a magistrate?—No farther than that.

Mr. *Curran*.—I trust your lordship will be of opinion that the counsel for the crown have failed to supply the evidence, and that it is not necessary for the traverser to go into any case; and the counsel for the crown having been admitted by the indulgence of the Court, waiting a length of time, to go into a supplemental case, they will not be allowed a repetition of that kind.

My lord, I submit, that this paper has not been proved in such a manner as to make it evidence to go to a jury. The evidence which the counsel have offered of it, consists shortly of this. I shall state merely that which is material—Mr. Haxton swore that he took the affidavit produced—that somebody signed it, that it was

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* See Woodfall's case, *ante*, vol. 90, p. 895.
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in a dark room, and he did not undertake to identify the person of any man swearing it. Therefore his evidence simply rests there, namely, that there was an affidavit sworn before him by somebody, calling himself Peter Finerty, and the question is, whether the want of proof of the identity of the person has been supplied or not?—That was the defect in the evidence; I say first they have not supplied it; because they cannot by law be admitted to go into the kind of evidence which they have given to supply the defect. It was stated by the counsel for the crown, that an affidavit was sworn by Finerty, and subscribed by Finerty, and an affidavit was produced as such; therefore there did appear that species of evidence from which they ought not to be allowed to travel. It is a higher species of written evidence, put upon the records of the country, authenticated by the oath of the man swearing it, and the office of the man taking it. In the most common case, if a deed be produced, it must be proved by the subscribing witness to it; and the acknowledgment of the party that it was his, cannot be admitted;—there must be evidence of a search for the witness, and his hand-writing must be proved, if he be not produced himself.

Mr. Justice *Downes*.—If a deed be the deed of the party against whom it is produced, and is admitted by himself, it is evidence, and may be read against him.

Mr. *Curran*.—My lord, I will not controvert that—I go upon that very principle. If there be evidence that the traverser admitted the signature to the affidavit to be his, it will be evidence against him. But where there is avowedly written evidence, that must be the foundation of the fact to be established by it, and it cannot be established by other evidence. It being admitted that there is such written evidence, no other evidence of an inferior nature can be received—I need not go into a variety of distinctions, into which cases adjudged may vary themselves. The evidence of the fact here to be established is contained in a written paper;—it must be proved some way by inferior evidence, if the direct cannot be had;—but no evidence save something to *prove that paper* can be received. Suppose an action brought upon a bond—the bond is in court—can any evidence be received but evidence of that bond—the hand-writing of the witness, or the admission of the party?—Could your lordship receive his admission that he owed a debt to that amount?—You could not, because there must be an acknowledgment of the bond itself; because other kind of evidence is not an inferior kind of evidence for the support of the muniment in question; but other evidence is evidence, giving up altogether the evidence of the muniment, and substituting a totally distinct proof in its place. So, my lord, there may be many ways of proving the contents of a paper; but no mere declaration of the party, not establishing that paper—or admitting

the signature to that paper—or giving authority to it, can be received in a court of justice. And it is upon the wisest principle—to prevent the gross and abominable influx of perjury, which may arise from evidence of that kind. The man producing a recorded instrument, must prove the instrument itself—no other evidence can be received—

Mr. Justice *Downes*.—Do you mean to say that no other possible proof of the publication of a paper can be given, but that affidavit which the legislature allows to be evidence?

Mr. *Curran*.—My lord, I do not contend for that; because it may be proved by many other ways. But where there is a particular authoritative piece of evidence, and that is brought into court, and sought to be made the foundation of a fact necessary to be established against the traverser, any collateral or secondary evidence of that fact is not admissible, when the primary evidence may be had.—That is the argument which I submit to your lordship's judgment.

Now, suppose I am erroneous, see what the evidence is. First, they wanted to prove that the paper charged in the libel was published by the traverser, and what is the evidence given?—The witness said, I went in and arrested the man, and he said he was the publisher of "The Press"—I do not rest upon that proceeding—taking a man by the throat, and repeating what he may have said under the surprise and terror of imprisonment.—But I ask this question—Has he said, he was the publisher of the paper in question? That paper containing the libellous publication, as it is called, and which has been read in court? or that he was at the time of that publication, the proprietor of that paper?—Suppose the question was, the execution of a deed—"have you executed it?"—"Yes"—"When?"—*non constat*.—So here he admits himself the publisher of the paper at the time he was seized; but did the sage questioner ask, whether he was the publisher at the time this paper was published—or that he was publisher a week before the arrest?—No: and now the argument is—he admitted he was the publisher on Saturday, therefore he must have been the publisher on Monday before—seven days of grace more—A week is half as good as a fortnight.—To what time is the admission to extend? He might have been the publisher at the time of the arrest—but why not allow another week, because no time runs against the crown? Why not allow a month?—A year?—If the declaration of a man charging him with responsibility is to be carried farther back than the full extent of his own confession, where is the good for which the Court sits, and a jury is called, if conjectures be a good ground upon which any man can be found guilty of a criminal charge?—I ask, is this evidence, suppose it every word true?—Suppose the man did state, when major Sirr went in—"I am the publisher of 'The Press.'—But here is a paper only six or seven days

before, and then it is said what likelihood is there that he was the publisher of that very paper?—That is conjecture—it is not proof. There is no forgery in the similitude of types:—But it would be curious to convict a man, because of such a similitude between one newspaper and another.—Your lordship may recollect an objection taken, not upon so strong a ground as this, in the case of the *King v. Rabb*,* with regard to a paper that is now dead—The Northern Star. If I remember right the objection was then allowed.

Mr. Justice *Downes*.—But all the rest of the judges thought the allowance of that objection was wrong.

Mr. *Curran*.—I know, my lord, they did. The case was this:—The affidavit of the defendant did state, that he was the proprietor of the paper at the time of the affidavit made;—it was objected, that it did not show him to be the proprietor at the time of the publication. The Court allowed that objection, and afterwards the judges thought the allowance of it was unconsidered, because the statute says, a new affidavit shall be made of the change of property, and therefore that affidavit was evidence to go to the jury. But there is a distinction between that case and this—the judges were wrong there in not receiving that previous admission of the publication; but there is a wide difference between acting upon an admission progressively, and retrospectively. There the opinion was erroneous, because it was strong ground to suppose, that he, who by a public act said he was publisher, continued to be so, as he did no public act to show the contrary. But here it is merely the loose assertion of a witness, stating, that upon a time subsequent to the alleged publication, the traverser did admit, he was then the publisher. Upon this ground, my lord, I submit, that what is offered is not evidence to show that this paper was published by the traverser at the bar.

Mr. Attorney General.—My lord, I do not

* *King's-Bench, November, 17th, 1794.*

“The King against the Proprietors of The NORTHERN STAR.

“At this trial at bar (which was an issue of traverse of an indictment for publishing a seditious libel),

“Lord CLONMELL, Chief Justice, mentioned, that on a former trial of *Rabb* (the printer of the same newspaper) a point had arisen, whether the affidavit lodged in the Stamp-office, pursuant to the statute 23 and 24 Geo. 3rd, c. 28, s. 1, was evidence of more than that the defendant was printer of the paper, at the time of making the affidavit; that the Court had then ruled this in favour of the defendant, but that they had since conferred with the other judges, who had overruled this decision.” *Ridgway, Lapp, and Schoales's Irish T. R.* 312.

know whether your lordship thinks it necessary for me to say any thing in answer. The learned counsel argues a question which does not arise; for this case must go to the jury, and I in full confidence rest, that there is evidence to go to the jury, and such as, if there be no other to affect it, will be sufficient to convict the prisoner. The question now is not whether the affidavit was made by the prisoner—but whether the prisoner be the publisher of the libel or not?—And the immediate question now is, whether there be any evidence given that he is the publisher?—I rely upon it, that there is evidence of the publication, exclusive of the affidavit altogether. The act of parliament upon this subject did not intend to alter the nature of evidence, or the power of a prosecutor to convict; but it endeavoured to have a permanent species of evidence always within reach to be produced against a publisher. Here a part of the evidence which the legislature intended to procure is wanting, and we now come without that evidence to show that the prisoner did publish this paper. It is not your lordship's province to say the prisoner did publish the libel; but to say, whether there is evidence to go to the jury.

See what the evidence is, exclusive of the affidavit: that a paper was published at No. 4, Church-lane, that the letter in question was in that paper, and when the magistrate went to arrest the prisoner he was asked, Was he the publisher? He said he was, and therefore he was arrested. I do most cheerfully meet the gentlemen, and put the case to the jury, whether there is evidence for them to consider, and deliberate upon, though the gentlemen say, there is no evidence against the man, acknowledging himself to be the publisher of the paper, and living in that very house where the paper was bought.

Mr. *Curran*.—The affidavit states, that the traverser lives in Mountrath-street.

Mr. Attorney General.—Then Mr. *Curran* has recourse to the affidavit which states the paper to be printed at No. 4, Church-lane, where the prisoner was arrested.

Mr. Justice *Downes*.—There is evidence for the jury, exclusive of the affidavit. The paper was bought at No. 4, Church-lane, by one witness, and another witness found the prisoner there; he acknowledged his name, and that he published that paper. In my apprehension that is evidence for the jury.

[Here the case was rested.

The jury intimated a desire to ask the commissioner of stamps a question; it was granted.]

Was there ever any person registered as the proprietor and publisher of “The Press,” but one?—No.

Mr. *Sampson*.—Had you any kind of knowledge by which to assert that? Do you know any thing of the registry?—No.

By the Jury.—Could there be any other registered without your knowledge?—No.

Mr. Sampson.—There are other commissioners of stamps?—There are.

They might take affidavits without your knowledge?—I think not.

Mr. Attorney General.—It is for the prisoner to show, that another affidavit was made, if there were any such.

Mr. Sampson.—Then Mr. Attorney General gives up the affidavit which has been produced.

Mr. Attorney General.—I give up nothing; but I say, that if the prisoner rests his defence upon a second affidavit, it is for him to show it.

Mr. Curran.—I do not think that the law throws such proof upon the traverser.

Mr. J. Sheares.—If they go upon the affidavit, they must prove it; or it must be given up. The evidence now given is incompatible. If they go upon the affidavit, they give up the other evidence; or if they rely upon the affidavit, they must give up the rest: so that the attorney-general must abandon the assertion, that he gives up nothing.

Mr. Attorney General.—We give up nothing. We rest our case here upon the part of the Crown.

DEFENCE.

Mr. Fletcher.—My Lord, and Gentlemen of the Jury; In this case I am counsel for the traverser; and I would not detain you half a minute upon so humble a subject as myself, but in truth, till within a few hours I did not know I should have had this duty to discharge. On returning home late last night, I found a brief in this case lying on my table; and when I saw on the back of it the two respectable names of Mr. Curran and Mr. Ponsonby, who have precedence of me, I thought I should have nothing more to do, than assist in the examination of the witnesses; but by some means, no licence had been obtained for Mr. Ponsonby. I merely offer this, that if I should not be so well arranged as might be expected, I may not be charged with inattention. Having stated thus much, I shall trespass upon your patience but a short time.

The traverser stands indicted for printing and publishing a false, malicious, and seditious libel against the government of this country. To establish that charge against the traverser, you, gentlemen, must be convinced of two things:—You must, in your consciences, believe, and must, as honest men, called upon to discharge the most solemn of all duties, in the presence of your country and your God, be satisfied of two facts, in either of which if you have any doubt, you are bound by every thing which you hold dear and sacred, to acquit the traverser. First, you must be convinced, that the traverser did print and publish the paper in question: and after having satisfied your minds of that preliminary question, then you are, secondly, to consider, whether the paper-writing, spread upon the record, be a false, malicious, and seditious libel or not?

With respect to the preliminary question, you have already heard much said and argued upon to induce the Court to be of opinion, that there was not sufficient evidence for you to deliberate upon; but the disposal of that question precludes not your province. You are now called upon to decide another question, upon which the Court was not called upon to decide. All that the learned judge decided was, that there was evidence for you to exercise your judgment and discretion upon from the circumstances sworn to; but upon those circumstances you are now to judge, and be convinced beyond the shadow of doubt, that the traverser was the publisher of that paper, which is stated to be a false, malicious, and seditious libel.

Now, gentlemen, be pleased to advert to the evidence of that fact; and if there be not a cogency arising from it, if it do not flash conviction upon your minds, the learned judge will be the first to tell you, that it is the boast of the criminal code, that where doubt and hesitation prevail in the minds of reasonable men, the jury are called upon to acquit. You are now called upon to discharge your duty in the eyes of your fellow-citizens, who can exercise their reason as well as you upon the evidence of the facts, who will exercise their reason, and draw that inference which the case will furnish. Every man is gifted by the Almighty with faculties to draw the deductions of reason. The public will exercise their discretion, and upon their determination will your verdict stand or fall. See how imperiously you are called upon to exercise with coolness, and divested of passion as far as it is possible for the human mind to be divested of it, that discretion with which you have been entrusted by the law, and see whether you have any room to doubt, that the traverser was the publisher of the paper.

See what the evidence is as to that fact:—you have evidence of an affidavit made by a man stating himself to be Peter Finerty—an affidavit taken in a dark room; but as to the identity of the person, or similitude of handwriting, you have not a tittle of evidence. As the case stood upon that, to a demonstration, no honest man, no man of reason, could draw the conclusion, that Finerty was the identical person who swore the affidavit, purporting to be the affidavit of the traverser. There is not an iota of evidence, which could weigh with any reasonable mind, that the traverser was the man.

What then is the farther evidence adduced by the crown? A young gentleman, for his private amusement, bought a paper, containing that letter signed Marous, which is charged as the libel; he carried it home, and gave it to his father, with whom it remained. How far that has established the fact against the traverser, of publishing that individual paper, you are to judge: because it has not been contended, if a man once happens to be the publisher of a paper, that can fasten criminality

upon him afterwards. It possibly may fasten negligence, or carelessness, upon him; but does it establish, that he published a false libel? Examine, and see what the evidence is; that the witness bought a paper in a certain house; not seeing Finerty, or having any communication with him. When you couple these parts together, when you recollect that there has been a legislative interference, which took away all doubt, namely, the necessity of a printer lodging in the Stamp-office a copy of every day's publication, authenticated by his own signature, what must you think of a prosecution, which abandons the legislative proof, and substitutes other evidence in its room? Does not this circumstance cogently press itself upon your consciences? What is become of that paper which ought to have been lodged? Was it deposited in the office? If it were, and produced, it might show that the traverser did not authenticate that particular paper. Either the paper was lodged, or it was not: if it were not lodged, they had no right to institute this prosecution. They ought to have taken those measures which the legislature has put into their hands to establish the fact beyond controversy. If the paper were lodged, I turn it upon them, and say, that the non-production of it must raise a suspicion, that it may have been authenticated by some other signature than that of the traverser. Therefore the non-production of that paper is a powerful argument indeed, and makes the case of the prosecution infinitely weaker than if no affidavit had ever been directed—if no legislative line had been pointed out for them to pursue. Because, if they omitted what they had in their power to enforce, they were guilty of gross negligence, and had no right to institute this prosecution. If they were not so negligent, why not produce the paper? One of two things must inevitably follow: either they were negligent, in not having the paper deposited; or, if they were not negligent, but that it was deposited, then the inference follows by implication of law, that the production of it would damn their cause, by showing that the traverser had not authenticated, by his signature, that individual paper, containing the libel charged in the indictment.

Therefore, gentlemen, you see I have gone through two stages or modes resorted to for the purpose of authenticating this paper. After a considerable pause, to enable the gentlemen for the crown to eke out their evidence, if peradventure it could be done, a witness was produced, who said, that when Finerty was arrested, he acknowledged himself to be the printer and publisher of "The Press." Did he own himself to have been the printer of the paper in question? No such thing. Therefore there is nothing by which men of reason or common sense can fasten criminality upon the traverser. This point has already been argued by Mr. Curran; therefore I shall take up no more of your time upon it at this late hour; but remind you again of the

obligation imposed upon you, that if you have any doubt or hesitation upon the fact, whether the traverser did publish this particular paper, you are called upon by your consciences, by your oath, your duty to your fellow-citizens, by the spirit of the English law, and the criminal code established here, to acquit the traverser.—But if, gentlemen, contrary to my real opinion, and what I cannot believe (except you have some private reason, or private knowledge not disclosed, and if you have you should come forward and offer yourselves to be examined—it is not too late), you should be satisfied, that the traverser did in fact publish this very paper; then you will have to consider the second question in the cause.

Gentlemen, the second question which you have to consider is, whether the paper stated in the indictment be a *false, malicious, and seditious libel*, or not? You are the judges to determine upon that, and you will determine it yourselves. Gentlemen, it is not many years back (not quite five years) since the old common law of the land was restored by an act of parliament in both countries. Antecedent to that, there had been a sort of trenching upon the old law relating to libels.* The juries were told, that with regard to the question of libel, they had nothing to do; they were to find the fact of publication merely, and the judge was to determine upon the record, whether the matter was libellous or not. That doctrine is gone to sleep, and peace be with it. Gentlemen, it now belongs to you to determine, whether the paper charged be false, malicious, and seditious, or not; because it is not sufficient to call a paper a libel; it must be false; and if it be, malice, by implication of law, attaches upon it; and when that is done, then, by implication of law, if it relates to the government, sedition also attaches upon it: since no man can say, if the matter published be false, that he was not instigated by malicious motives, and when malicious motives appear in a matter relating to government, sedition is attached upon it.

Then, gentlemen, the question occurs, are the matters charged, false? And is there that presumption arising from them, that from the mere statement of them they appear to be false? Several passages have been selected, and the first of them stated by the attorney-general relates to the conviction of a person of whom you have all heard, of the name of William Orr: that the conviction was had upon the testimony of a man, who appeared to have been perjured. It is not stated by the publication, whether the circumstances from which perjury was attached upon the man were disclosed antecedent to the conviction, or not; therefore I have a right to suppose what is most favourable to my client, and what must have been the case, to reconcile the verdict to any principle of reason or justice; I am to suppose, that those circum-

* See vol. 22, p. 393.

stances might not arise during the trial. I must feel persuaded, that if they arose during the trial, so as to exclude all kind of credit from the witness, the learned judge would have taken the case from the determination of the jury. I understand there was but one single witness—[Here Mr. Fletcher was told there were two witnesses]—I understand there were two witnesses, but only one of them swore to the nature of the oath. Thus, I shall take it for granted, that antecedent to the conviction, there did not appear sufficient circumstances to enable the learned judge to state to the jury his doubts of the credit of the witness, and therefore conviction followed.

Gentlemen, I am recapitulating the charge, taking it in the most offensive way, and if I can put it in any point of view in which it cannot be false, malicious and seditious, you must acquit the traverser.

I stated, that conviction followed the evidence; but what followed that? We are prepared with evidence to show, that intimidation was used where intimidation should not have been used—that drink was introduced, where the verdict should have been the result of cool and sober reflection—in a case where the suspicion of our criminal code swears a man to keep the jury from all manner of meat or drink, or any thing that may call the thoughts of a jury from the subject matter of their deliberation. Gentlemen, if the fact be so, that drink did get in among the jury; that certain of them were influenced by liquor, and that weakness and imbecility of understanding not completely in its proper tone and assailed by others—if this be the fact, and that certain of the jury did sanction assertions of this kind by solemn declaration upon oath, what are you to say of such a verdict? If it should appear to you, that there were other affidavits fastening upon the testimony of the witness a reasonable doubt of perjury, I go no farther. If those affidavits did come up to the executive magistrate—if he had an opportunity of reading them, what shall I say to that measure of government which did not think proper to interpose between the prisoner and human imbecility and profligacy, and snatch away the victim of both? What imputation falls upon that magistrate it is not for me to say. I only state what I am instructed will appear. What shall you say to that part of the paper which charges the verdict to have been obtained by perjury? There is nothing proved to warrant the statement that it is charged to have been procured by the government of the country. There are no expressions stating it to have been so; and are you, in cases where you should be governed by the rules of common parlance, to sit grammatical weighers of words, in affixing criminality upon any man? Is it not usual to say, when a man has perjured himself without the knowledge of the crown, and a verdict is had, that such verdict was obtained by perjury? It does not insinuate

that the crown procured the perjury. The learned leader of this prosecution would spurn at such an idea; I know he would. But what ground is there to state as an inference from this publication, that the writer did charge such a fact? Such an idea cannot by fair deduction be elicited from the paper:—it only says, that the verdict proceeded from perjury; and the subsequent part, if true, sufficiently establishes what I have already stated, namely that after the jury retired from the bar, a verdict was procured in a manner that it ought not to be.

Then, gentlemen, I am warranted to put any possible case for my client; it is for you to say, whether any thing in alleviation be established by evidence. Suppose that, with the knowledge of those whose duty it was to know it, this verdict was had upon the testimony of a man, where there was a reasonable suspicion that he did not discover the prisoner's motive—that the verdict was procured by intimidation and the introduction of drink into the jury box; suppose these facts to be established; suppose the evidence we mean to give should induce you to believe, that the verdict was had by perjury, by intimidation, by drink—I ask you what the feelings of any honest man must be at such a lamentable picture of the criminal justice of the country? I call upon you to give it a name: is there any too strong in this paper. Supposing the facts to be true, does human language furnish words or epithets black enough to paint it?

Gentlemen, it is not for me to state how it took place; I am stating, that it did take place; and we will show stronger evidence of the fact than the counsel for the crown showed of the fact of publication; evidence of what passed in the jury room, and evidence respecting the character of that man, who stood in such a situation as to have a reasonable doubt raised, whether he told truth, or not. What must be the impression upon your minds after such evidence shall be given?

Gentlemen, this is stated to be a prosecution in vindication of government, and the administration of justice. If these facts be true, I stand forward more completely the advocate of the government, and the justice of the country, by endeavouring to convince you of that honest indignation which every honest man must feel at the recital of them, and which must have influenced the writer of the publication in question: for, gentlemen, do you imagine, that I am the advocate of the libeller of the justice of the land? God forbid! Educated from my earliest days in a knowledge of the laws and constitution; with a character unstained; white as the robe of ermine; I challenge any man to cast an imputation upon me. Does any man think I would support a publication if I thought it a libel upon the justice of the land? No; the industry of any man will only show, that from human inadvertence such a thing might take place; but from the general complexion of our

legal proceedings it could not. Is the justice of the land implicated in this charge? God forbid! What is implicated in it? Any general system of the government?—No. But that in this individual respect, supposing what I stated to be true, the most amiable prerogative of the crown; the flower that should bloom with never-fading lustre; was not exerted. If it was not, I am willing to suppose it was occasioned by some of those moments of lassitude arising from an accumulation of business:—I am to lament it. But what is the privilege of the press—the freedom which you are called upon to preserve? Does it consist in exposing the errors of men in their private capacity—or poisoning the source of domestic felicity? No such thing: that is the abominable licentiousness of the press, which ought to be restrained. But, gentlemen, when you are told, that the liberty of the press is the support of every free government—what is it? Is it not the privilege of man, *bonâ fide*, to state before the tribunal of the public, a public abuse? For what purpose is the press to call upon a public officer, but to correct an error, if it be capable of correction? If not to caution him against committing it again? What is the right, if errors cannot be attributed to the government?

Gentlemen, you are told, that this is the blackest of all libels. It contains strong language. But the question is—is it *false*? I hold in my hand a paper, called a libel; prosecuted as such before a jury of England, the celebrated letter which Junius wrote to the king. What are the passages in that paper? It is too late to take up your attention with many of them. One or two I will read:

“The people of England are loyal to the house of Hanover, not from a vain preference of one family to another, but from a conviction that the establishment of that family was necessary to the support of their civil and religious liberties. This, sir, is a principle of allegiance equally solid and rational, fit for Englishmen to adopt, and well worthy your majesty’s encouragement. We cannot be long deluded by nominal distinctions. The name of Stuart, of itself is only contemptible,—armed with the sovereign authority, their principles were formidable. The prince who imitates their conduct, should be warned by their example; and while he plumes himself upon the security of his title to the crown, should remember, that as it was acquired by one revolution, it may be lost by another.”

Again, the same writer says:—“The people of Ireland have been uniformly plundered and oppressed. In return they give you every day fresh marks of their resentment. They despise the miserable governor you have sent them, because he is the creature of lord Bute: nor is it from any natural confusion in their ideas, that they are so ready to confound the original of a king with the disgraceful representation of him.”

Gentlemen, why have I read so much from that celebrated letter? It is notorious, that Woodfall,* the printer, was prosecuted for that letter, and found guilty of publishing only.† No judgment ever followed that verdict; and Gentlemen, if before a jury of Englishmen, in the heart of London where majesty itself resides and not the delegated representative of political power, the king was told, that *his title to the crown was acquired by one revolution and might be lost by another*, whence comes the assertion of the counsel, that such a flagitious libel as the present is not to be found in the annals of the law? I put them side by side—judge between them. There the whole code of the law was called in question—the prosecution of Wilkes and several others was called in question.—Here the conviction of an individual is said to have been had by ways that were not proper, and therefore he called for mercy. If the freedom of the press in England so far back, in the time of the American war, when rebellion raised its standard, but which history calls a struggle for the dearest rights of man—if this sort of attack could be made in the midst of the city of London, blessed with the presence of majesty itself, a just, humane and religious prince—if Englishmen know the value of the constitution as Irishmen ought to do—if they found *publication only*—Have I not a right to argue, that, supposing this verdict against Orr to have been obtained in the manner I have stated, did it not call for the liberty of the press to animadvert upon it, and does such animadversion deserve the name of *libel*?—Does it deserve the name of libel to tell the government to remedy that which, if not remedied, might alienate the affections of the people?—I meddle not with the language or expressions of the paper; these are but the trappings and plumage of the bird. They are inferior to the polished, two-edged sword of Junius, but that is not the question:—the question is, whether the writer *bonâ fide* stated the fact?—or whether, with the malice of the devil, he fabricated this story to bring disgrace upon the government, and to alienate the affections of the people from them?—If he did the latter, find him guilty—I am the first to say you should. But, gentlemen, if there be ground for saying it, what is the freedom of the press? Does it consist in panegyrising government, and libelling independent men? Does the liberty of the press consist in libelling that bright offspring of your native soil, the earl of Moira? Has he no stake in the country? Has he not bled in its cause? Is that the liberty of the press? Or is government to be panegyrised, when it is wrong? Would it be the liberty of the press to say, supposing the facts stated to be true, that the trial of Orr was satisfactory to every honest and good

* See his case, *ant2*, vol. 20, p. 895.

† See also the case of Daniel Isaac Eaton, *ant2*, vol. 22, p. 832.

man? It is true, some sort of imputation was flung upon the witness who swore to the criminality, but every honest man saw the folly of it. As for drink, it was only to recreate the weary spirits of the jury. Some sustenance was necessary; from weakness they could not bring in such a verdict, *omni exceptione major*; no imputation attaches, but the contrary, and shall government be blamed for carrying into execution a verdict so found?—No such thing; but every paper shall proclaim the correctness, the clemency, and humanity of such a proceeding!—Is that the liberty of the press?—If it be, it is not that liberty which procured our present constitution. That is not the liberty of the press, which put down ship-money.—That is not the liberty of the press which established the Habeas Corpus act.—That is not the liberty of the press which brought the present king to the throne, which he holds by the assent of his people, and which I hope he may long enjoy. What are we not indebted to the press for? Was it not the libels upon the Catholic religion which produced the Reformation? Was it not the press which prevented money being taken from the subject? The publications of the press, in the business of the Seven Bishops put down the dispensing power. To what do you owe the British constitution? Did some man catch the divine illumination from heaven, and promulgate it to the people? No: but abuse heaped upon abuse of their rights, roused them to a sense of their privileges. Was it panegyrics upon the governments which corrected their errors?—Certainly not. Therefore, gentlemen, I come home to that which I set out from.—The liberty of the press is that inherent right in every man to animadvert upon the abuses of government, and which right has produced every other right, which you now enjoy. Government can go on without panegyric; they can be comforted without it; they do not call every day for food of that species. His excellency can live without it. But I ask you again, does the liberty of the press consist in panegyrising government, or libelling individuals obnoxious to them?

The case comes to this: You have the authority of the attorney-general, that this is a prosecution in which the liberty of the press is concerned—I say so too. That it is to vindicate the government of the state—I say so too. That it is a prosecution to vindicate the administration of justice—I say so too. It is a vindication in this way, that if facts of that kind, which have been stated, have taken place, and we have evidence sufficient to induce reasonable men to think so, the liberty of the press was well exerted, whether discreetly—whether with genuine pure politeness, I cannot say—in publishing what it has. I am not aware that you are appointed judges of the language of libels, or are impanelled to try what is the politest mode of telling a man he has done

wrong. Is want of grammar, or of polite breeding to inflict a punishment upon the traverser?—No, gentlemen, you will say, that if this be a publication, containing reproach for improper conduct, that it is not false, when we lay before you evidence to show that it is true. If it be true, malice attaches not upon it; and it be not false, or malicious, where is the sedition?—I shall not trouble you farther upon this point.

Another part of this paper relates to the recall of lord Fitzwilliam. Is this prosecution to vindicate the ways of Mr. Pitt, which are marvellous indeed! The paper then states, in coarse and vulgar language, that there are rapine, burnings and desolation throughout the country. I call upon you to lay your hands upon your hearts, as God shall judge you—Are there burnings and desolation throughout Ireland. I put it in so many words. Read the proclamations day after day, month after month, week after week. What do they say? What is it appears in these polite publications in which no libels are to be found?—You know the papers I mean?—never libellous; never contaminated. How many parishes, baronies, and counties are put out of the king's peace? Are there these enormities?—If there be, it is sufficient for the man, stating that desolation had taken place in the kingdom. The statement of these facts by a noble peer is more to his honour than that he derives his blood from the Plantagenets of old. Lord Moira* offered to prove at the bar of the House of Lords in England facts which came within his own knowledge, vindicating his statement. Have you not heard that the same facts were offered to be proved at the bar of your own House of Commons? If not, you are the only men in the community who have not heard it. What follows? Could such a statement be made by that illustrious man, if it were not founded? I trust he will come here and make the same statement. Was not his offer of proof refused? What follows? Was there not reasonable ground to state that disturbance and desolation followed the advancement of the present executive magistrate? Was there any foundation for stating, that lord Fitzwilliam ought not to have been removed? That measures which would have reconciled five-sixths of the subjects were ready to take place had he remained; and I ask you, was the writer justified in putting upon paper, that much misery has followed the change of the government? Or can you say, against a mass of evidence, that the writer invented all this in the malignity of his heart? The counsel for the crown said, never was malice so diabolical, stating desolation and burnings. Have you seen nothing of them?—have you seen no appearance of a military government? Do you say it is all conjecture? All fancy? Or not fancy, but diabolical invention, hatched by Lucifer to

* See the New Parl. Hist. vol. 33, p. 1052.

villify the king's government? If it be so, find the traverser guilty. You ought to show it is false. Convince the world by your verdict. If that be your mode of reasoning—if you are so convinced—find a verdict against him. I am the first to call for it.

Gentlemen, you have been often told of the blessings of the constitution, and you are desired to look at the sister kingdom. I call upon you to look at her with a steady eye. Look at the conduct of juries in that country—Look at their conduct in the case of Tooke—Their verdict in the case of Thelwall and Hardy.* In all these, brought forward by the existing administration to feel the pulse of the people, the prosecutors were defeated, and therefore the public peace suffered no disturbance there. Look at England then with a steady eye—"oculo irretorio"—If you take a lesson from that country, do not imitate her when she is wrong; but deviate sometimes into rectitude.

Gentlemen, I shall not trouble you with any other passage, or others which are of an inferior nature; but shall take leave with adjuring you to consider, whether there be evidence to convince you, that the traverser did publish this paper; and if you should be satisfied of that, then to consider well whether it be false, and intended as a malicious misrepresentation of facts. I have been educated in a respect for the laws. I continue to have a respect for them, and I am the first to conjure you to find him guilty, if you are satisfied of those facts. But if he be a well-intentioned man, having a reasonable ground to induce him to think there was something wrong, he was well warranted to use the liberty of the press, in stating such matter, and in such case you cannot find him guilty, because by so doing, you would find the matter to be false and seditious, when you were convinced it was not.

The Right Honourable Barry lord Yelverton,† Lord Chief Baron of the Court of Exchequer, examined.

I beg your lordship to look at the hand-writing subscribed to that affidavit?—That is my hand-writing, I believe.

And that [showing a second affidavit]?—I believe the name Yelverton subscribed to this, is my hand-writing.

Your lordship tried William Orr?—I did.

You transmitted a recommendation from the jury to the lord lieutenant?—I did.

Does your lordship recollect how often he was respited?—According to the best of my recollection he was respited twice. Three times, if I may mention the respite of his execution at the assizes to transmit the recommendation of the jury, I then sent to Mr.

Pelham;* I had an answer, that the lord lieutenant was not in town, had no opportunity of consulting, and therefore, for the present, he could do no more than recommend a respite for ten days. As well as I recollect, I postponed the sentence for sixteen days, in order to give time for the recommendation of the jury, and what other recommendation the unfortunate man could procure to enforce its effect, if any he could. I recollect that after I came to town, another respite was granted for a few days, I believe from Monday to Thursday, and then farther for a few days more. I cannot be precise.

Does your lordship know the Rev. Dr. Macartney's hand-writing?—I do not recollect that I ever saw him write; I know him very well; I knew him so long ago as when we were in college together; but I cannot say whether this be his hand-writing, or not.

Does your lordship know whether Dr. Macartney laid any document before government respecting Wheatly?—There was.

Can you say whether that was the document?—I cannot.

What was the nature of the document he laid before government; was it an imputation upon the character of Wheatly?

Mr. Attorney General.—My lord, I object to any parol evidence being given of the contents of any paper or affidavit.

Lord Yelverton.—Sitting where I am, I am in the judgment of the Court, whether I should answer; but I would have it understood, that I have no personal objection to the question.

Mr. Justice Downes.—I understand from the statement of counsel, that the traverser means to offer this evidence by way of justification; is that the object of it?

Mr. Sampson.—Yes, my lord.

Mr. Justice Downes.—I am decidedly of opinion that such evidence is not admissible.

Mr. Sampson.—Does your lordship permit me to ask as to the state of the country? Will your lordship permit me to ask the witness, what has come to his actual knowledge?

Mr. Attorney General.—My lord, I object to such evidence; it has no relation to this trial.

Mr. Justice Downes.—It has been held at all periods of time as the law of the land, that such evidence is not admissible.

Mr. Sampson.—Does your lordship hold it not to be admissible, to go into evidence of the truth of the libel?

Mr. Justice Downes.—I do expressly hold it. I am clear that such evidence is not admissible—

Mr. Orr.—After what has fallen from your lordship, it is with very great deference I

* The chief Secretary to the Lord Lieutenant. He was appointed Secretary of State for the Home Department in 1801. On the death of his father in 1806, he became Earl of Chichester.

* See the 24th and 25th Volumes of this collection.

† Afterwards Viscount Avonmore.

should offer any thing with a hope of shaking your opinion upon the point as to the truth of the publication, in order to enable the jury to determine whether it be a libel or not.

Mr. Justice *Downes*.—I hold the law to be so clear in the time of lord Coke, and since, upon this point, that it is not now admissible to debate. The act of parliament which passed in England, relating to the trial of libels, and the proceedings attending the passing of that act, have put us in possession of an authority too strong to admit of debate. The authority I allude to is the question put to the twelve judges of England, when the bill was in progress through both Houses of Parliament.—One of the questions was—"Is the truth or falsehood of the written or printed paper material, or to be left to the jury upon the trial of an indictment or information for a libel; or does it make any difference in this respect, whether the epithet *false* be, or be not used in the indictment or information?" And to that question, the judges answered unanimously, "That the truth or falsehood of a written or printed paper is not material, or to be left to the jury on the trial of an indictment or information for a libel. We consider this doctrine so firmly settled, and so essentially necessary to the maintenance of the king's peace, and the good order of society, that it cannot now be drawn into debate."*

Mr. *Orr*.—My lord, all that I shall mention now is, that in the case of the Seven Bishops,† who were tried for a libel upon the king's government in decrying the dispensing power, they were permitted to give evidence of the truth of their writing, and the rolls of parliament were produced, to show that, by law, the king had no such power; and I do not consider the decision of Powell and Holloway, the judges who admitted that evidence, as less constitutional, because they were displaced by king James for that opinion.

Mr. Justice *Downes*.—If I required any authority to strengthen the opinion I have given, the act of parliament would strengthen it; because the opinion of the judges in England was given during the progress of the bill, through the two Houses of Parliament: the legislature had the unanimous opinion of all the judges, and they have not thought fit to alter the law in that particular by the act of parliament, either in England or Ireland.

E. Cooke, esq. sworn.

You hold a situation in the Secretary's office?—I do.

Do you recollect a recommendation having been transmitted to your office from the judges who tried Orr, as the recommendation of the jury for mercy?—I recollect such a recommendation was transmitted.

Do you recollect any paper being brought

to your office respecting the trial of Orr, by a person of the name of Macartney, a justice of peace.

Mr. Attorney General.—I object to that question.

Mr. *M'Nally*.—I only ask as to the fact of the paper being sent. I do not ask what the contents were.

Mr. Justice *Downes*.—How does that bear upon this case?

Mr. *M'Nally*.—To show that the mercy, which was recommended, was denied.

Mr. Attorney General.—Undoubtedly, Orr was convicted and executed.

Mr. *M'Nally* [to the witness].—Did not the jury recommend mercy to be extended?

Mr. Attorney General.—I object to that question; this is an attempt to prove the truth of the libel.

Mr. Justice *Downes*.—You are in possession of my opinion, that such matter is not examinable into.

Mr. *Curran*.—My lord, I do not feel that we have any evidence, not subject to the objection now made. It was our intention to have offered a good deal of evidence as to some concomitant facts; but under the opinion which your lordship seems to entertain, I do not think that such evidence can stand entirely clear of the objection founded upon that opinion. And though such evidence might be offered under distinctions that might effectually keep clear of your lordship's opinion, yet we do not think it would be acting with candour to attempt it. Therefore, my lord, we say, we do not mean to offer any more evidence, and with your lordship's permission, I wish to address some observations to your lordship, and to you, gentlemen of the jury, upon the nature of the charge now before you, and upon the grounds upon which it does appear to my humble judgment, it is your duty to consider the case, and also upon the extent of the authority which the law has given you in cases of this kind.

And, gentlemen, in the perilous and agitated state of this unhappy country, I do not know a more important question for your consideration than that now submitted to you. I am sorry any thing has been said on either side to bias your mind, and to disturb that deliberate reflection whose decision alone can give quiet, if quiet can be given to the public, and to bear that character which ought to be stamped upon every honest verdict of a jury.

Gentlemen, however I may regret it, I cannot but observe into how great a latitude of statement this case has been branched.—Gentlemen, you are standing in an awful situation indeed!—The situation of the country has been adverted to—you must feel it, and you must feel, that under all that agitation of public mind, you are called upon to decide a cause affecting the liberty of a fellow-subject, who has not had the privilege of calling one of you as his judge, or of objecting to one of you as not altogether indifferent in the cause.

* See vol. 22, p. 298.

† See the case, *ante*, vol. 12, p. 183.

Never did I feel myself so sunk under the importance of any cause : to speak to a question of this kind at any time would require the greatest talent and the most matured deliberation ; but to be obliged without either of those advantages to speak to a subject that hath so deeply shaken the feelings of this already irritated and agitated nation, is a task that fills me with embarrassment and dismay.

Neither my learned colleague nor myself received any instruction or license until after the jury were actually sworn, and we both of us came here under an idea that we should not take any part in the trial. This circumstance I mention, not as an idle apology for an effort that cannot be the subject of either praise or censure, but as a call upon you, gentlemen of the jury, to supply the defects of my efforts, by a double exertion of your attention.

Perhaps I ought to regret that I cannot begin with any compliment, that may recommend me or my client personally to your favour. A more artful advocate would probably begin his address to you by compliments on your patriotism, and by felicitating his client upon the happy selection of his jury, and upon that unsuspected impartiality in which, if he were innocent, he must be safe. You must be conscious, gentlemen, that such idle verbiage as that could not convey either my sentiments or my client's upon that subject. You know and we know upon what occasion you are come, and by whom you have been chosen ; you are come to try an accusation professedly brought forward by the state, chosen by a sheriff who is appointed by our accuser.

[Here Mr. Attorney-general said, the sheriff was elected by the city, and that that observation was therefore unfounded.]

Be it so : I will not now stop to inquire whose property the city may be considered to be, but the learned gentleman seems to forget, that the election by that city, to whomsoever it may belong, is absolutely void without the approbation of that very lord lieutenant, who is the prosecutor in this case. I do therefore repeat, gentlemen, that not a man of you has been called to that box by the voice of my client ; that he has had no power to object to a single man among you, though the crown has : and that you yourselves must feel under what influence you are chosen, or for what qualifications you are particularly selected. Yet let me say, I would not waste myself in an unavailing defence, if I did not suppose you to possess integrity of heart ; if I supposed you the servile instruments of power, I would scorn to play upon you ; but I warn you that coolness and impartiality of judgment has not been the recommendation to the office which you are now called upon to fill. At a moment when this wretched land is shaken to its centre by the dreadful conflicts of the different branches of the community ; between

those who call themselves the partizans of liberty, and those who call themselves the partizans of power ; between the advocates of infiction, and the advocates of suffering ; upon such a question as the present, and at such a season, can any man be at a loss to guess to what class of character and opinion a friend to either party would resort for that jury which was to decide between both ? I trust, gentlemen, you know me too well to suppose that I could be capable of treating you with any personal disrespect ; I am speaking to you in the honest confidence of your fellow-citizen. When I allude to those unworthy imputations of supposed bias, or passion, or partiality, that may have marked you out for your present situation, I do so in order to warn you of the ground on which you stand, of the awful responsibility in which you are placed, to your conscience, and to your country ; and to remind you, that if you have been put into that box from any unworthy reliance on your complaisance or your servility, you have it in your power before you leave it to refute and to punish so vile an expectation by the integrity of your verdict ; to remind you that you have it in your power to show to as many Irishmen as yet linger in this country, that all law and justice have not taken their flight with our prosperity and peace ; that the sanctity of an oath, and the honesty of a juror are not yet dead amongst us ; and that if our courts of justice are so often superseded by so many strange and terrible tribunals, it is not because they are deficient either in wisdom or virtue.

Gentlemen, this is no cause of private defamation—it is not the case of a libeller disturbing the repose of a peaceful fire-side, or wounding female honour, and exposing domestic transactions to public view—but it is the case, and so it has been stated in the first instance, of a libel upon the executive magistrate of the country—a man holding the highest situation which can be held in this country, and therefore liable to be watched and examined by all the subjects of it. The man who exercises great official functions must be liable to general observation, and therefore if it be competent to the press to speak of any man, it is competent to speak of such a man and his measures.

Gentlemen, it is necessary that you should have a clear idea, first of the law, by which this question is to be decided ; secondly of the nature and object of the prosecution. As to the first, it is my duty to inform you that the law respecting libels has been much changed of late.—Heretofore, in consequence of some decisions of the judges in Westminster-hall, the jury was conceived to have no province but that of finding the truth of the innuendoes and the fact of publication ; but the libellous nature of that publication, as well as the guilt or innocence of the publisher, were considered as exclusively belonging to the Court. In a system like that of law, which rests upon a logi-

cally, no one erroneous principle can be introduced, without producing every other that can be deducible from it. If in the premises of any argument you admit one erroneous proposition, nothing but bad reasoning can save the conclusion from falsehood. No it has been with this encroachment of the Court upon the province of the jury with respect to libels. The moment the Court assumed as a principle that they, the Court, were to decide upon every thing but the publication; that is, that they were to decide upon the question of libel or no libel, and upon the guilt or innocence of the intention, which must form the essence of every crime; the guilt or innocence must of necessity have ceased to be material. You see, gentlemen, clearly, that the question of intention is a mere question of fact. Now the moment the Court determined that the jury was not to try that question, it followed of necessity that it was not to be tried at all; for the Court cannot try a question of fact. When the Court said that it was not triable, there was no way of fortifying that extraordinary proposition, except by asserting that it was not material. The same erroneous reasoning carried them another step, still more mischievous and unjust: if the intention had been material, it must have been decided upon as a mere fact under all its circumstances. Of these circumstances the meanest understanding can see that the leading one must be the truth or the falsehood of the publication; but having decided the intention to be immaterial, it followed that the truth must be equally immaterial—and under the law so distorted, any man in England who published the most undeniable truth, and with the purest intention, might be punished for a crime in the most ignominious manner, without imposing on the prosecutor the necessity of proving his guilt, or giving the accused any opportunity of showing his innocence. I am not in the habit of speaking of legal institutions with disrespect; but I am warranted in condemning that usurpation upon the right of juries, by the authority of that statute, by which your jurisdiction is restored. For that restitution of justice the British subject is indebted to the splendid exertions of Mr. Fox and Mr. Erskine,—those distinguished supporters of the constitution and of the law; and I am happy to say to you, that though we can claim no share in the glory they have so justly acquired, we have the full benefit of their success; for you are now sitting under a similar act passed in this country, which makes it your duty and right to decide upon the entire question upon the broadest grounds and under all its circumstances, and of course to determine, by your verdict, whether this publication be a false and scandalous libel: false in fact, and published with the seditious purpose alleged of bringing the government into scandal, and instigating the people to insurrection.

Having stated to you, gentlemen, the great and exclusive extent of your jurisdiction, I shall beg leave to recur to a distinction to which I have already alluded and which will strike you at first sight; and that is, the distinction between public animadversions upon the character of private individuals, and those which are written upon measures of government, and the persons who conduct them. The former may be called personal, and the latter political publications. No two things can be more different in their nature, nor in the point of view in which they are to be considered by a jury. The criminality of a mere personal libel consists in this, that it tends to a breach of the peace; it tends to provoke all the vindictive paroxysms of exasperated vanity, or the deeper or more deadly vengeance of irritated pride.—The truth is, few men see at once that they cannot be hurt so much as they think by the mere battery of a newspaper. They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawling of a news-hawker. If it be wantonly aspersed, it is but for a season, and that a short one, when it emerges like the moon from a passing cloud to its original brightness; it carries with it an inseparable antidote in the avowal that it comes from an enemy; and vainly will that enemy bend the bow or feather the arrow, if the point of it be not supplied by the conduct of the intended victim. In vain may that enemy revile, and harmless must be his invective against any man, if he does not speak of him that language to the world which his own conscience speaks of him to himself. It is right, however, that the law and that you should hold the strictest hand over this kind of public animadversion, which forces humility and innocence from their retreat into the glare of public view; which wounds and terrifies; which destroys the cordiality and the peace of domestic life; and which without eradicating a single vice, or single folly, plants a thousand thorns in the human heart.

In cases of that kind I perfectly agree with the law, as stated from the bench; in such cases, I hesitate not to think, that the truth of a charge ought not to justify its publication. If a private man is charged with a crime, he ought to be prosecuted in a court of justice, where he may be punished if it be true, and the accuser if it be false; but far differently do I deem of the freedom of political publication. The salutary restraint of the former species, which I talked of, is found in the general law of all societies whatever; but the more enlarged freedom of the press, for which I contend in political publication, I conceive to be founded in the peculiar nature of the British constitution, and to follow directly from the contract on which the British government hath been placed by the revolution. By the British constitution, the power of the state is a trust, committed by the people,

upon certain conditions: by the violation of which, it may be abdicated by those who hold, and resumed by those who conferred it. The real security therefore of the British sceptre is the sentiment and opinion of the people, and it is consequently their duty to observe the conduct of the government; and it is the privilege of every man to give them full and just information upon that important subject. Hence the liberty of the press is inseparably twined with the liberty of the people. The press is the great public monitor; its duty is that of the historian and the witness, that "nil falsi audeat, nil veri non audeat dicere;" that its horizon shall extend to the farthest verge and limit of truth; that it shall speak truth to the king in the hearing of the people, and to the people in the hearing of the king; that it shall not perplex either the one or the other with false alarm, lest it lose its characteristic veracity, and become an unheeded warner of real danger; lest it should vainly warn them of that sin, of which the inevitable consequence is death. This, gentlemen, is the great privilege upon which you are to decide; and I have detained you the longer, because of the late change of the law, and because of some observations that have been made, which I shall find it necessary to compare with the principles I have now laid down.

And now, gentlemen, let us come to the immediate subject of the trial, as it is brought before you, by the charge in the indictment, to which it ought to have been confined; and also, as it is presented to you by the statement of the learned counsel, who has taken a much wider range than the mere limits of the accusation, and has endeavoured to force upon your consideration extraneous and irrelevant facts, for reasons which it is not my duty to explain. The indictment states simply that Mr. Finerty has published a false and scandalous libel upon the lord lieutenant of Ireland, tending to bring his government into disrepute, and to alienate the affections of the people; and one would have expected, that, without stating any other matter, the counsel for the crown would have gone directly to the proof of this allegation; but he has not done so; he has gone to a most extraordinary length indeed of preliminary observation, and an allusion to facts, and sometimes an assertion of facts, at which I own I was astonished, until I saw the drift of these allusions and assertions. Whether you have been fairly dealt with by him, or are now honestly dealt with by me, you must be the judges. He has been pleased to say, that this publication signed "*Marcus*" is only a part of a system pursued by that paper.—That "*The Press*" itself is to be considered as a mere secondary and instrumental part of an entire preconcerted system, contrived for the purpose of exciting the people to a resistance against their rulers—tending to traduce the rulers of their country, and so excite an abhorrence of the measures of go-

vernment, of the laws, and of the administration of justice.

So widely has the charge been stated—I feel myself bewildered in the unexpected extent of it. But perhaps it is, notwithstanding, too narrow in some points, though it is too extensive in others.

As to this I will only ask you whether you are fairly dealt with? Whether it is fair treatment to men upon their oaths, to insinuate to them, that the general character of a newspaper (and that general character founded merely upon the assertion of the prosecutor), is to have any influence upon their minds, when they are to judge of a particular publication? I will only ask you, what men you must be supposed to be, when it is thought that even in a court of justice, and with the eyes of the nation upon you, you can be the dupes of that trite and exploded expedient, so scandalous of late in this country, of raising a vulgar and mercenary cry against whatever man, or whatever principle, it is thought necessary to put down; and I shall therefore merely leave it to your own pride to suggest upon what foundation it could be hoped, that a senseless clamour of this kind against a series of newspapers with which the present traverser may not have had the least connexion, and not one of which is now produced before you, could be echoed back by the yell of a jury upon their oaths.—I trust, gentlemen, you see that this has nothing to do with the case now before you.

Again, let me ask you, what has this case to do with the administration of justice—if by that is meant the *judicial* administration of justice? If this were a libel upon the judicial administration of justice, you would scarcely find an advocate of twenty years standing at the bar, so little improved by his experience as to attempt to vindicate an attack upon the judicial administration of justice.—Two highly respected judges bore a part in the trial alluded to. There is not one word of reproach upon either of them, or their venerable and respected characters. Then I say, in one word, it is no libel upon the judicial administration of justice.

But, gentlemen, I tell you what it is.—It is a charge upon his majesty's ministers, to whom has been committed that most valuable and important branch of the prerogative, that of extending mercy to those to whom it ought to be extended. It is stated strongly in that libel, if it be one, that that department has not been filled as it ought to be—that the magistrate has not administered the sword put into his hand, with mercy to the subject. That is the charge contained in this publication.—Gentlemen, the language of it has been abused.—Be pleased to consider you are not trying the *author*, but the *printer*, who did not write, and possibly could not write the paper in question, but who seeing the honest intention and fair spirit of its contents, caused it to be published. A printer may be

answerable for the substance of what he prints and publishes, but surely can never be held responsible for the language, or the style.

Gentlemen of the jury, other matters have been mentioned which I must repeat for the same purpose, that of showing you that they have nothing to do with the question. The learned counsel has been pleased to say, that he comes forward in this prosecution, as the real advocate for the liberty of the press, and he has laid down one position, with part of which I agree, but in the extent of which I do not coincide. He has been pleased to say, that the constitution can never be lost, while the freedom of the press remains, and that nothing can destroy the liberty of the press but its own licentiousness; as to that, he might as well have told you, that there is only one mortal disease of which a man can die; and when he comes forward to extinguish this paper in the ruin of the printer by a state prosecution, you must judge how candidly he is treating you, both in the fact and in the consequence; he reasons, as he must do, if he recommended the putting a very dear friend to death as a preventive against the single disease of which he might otherwise chance to die.—Gentlemen, the press has died the death of tyranny in every country of Europe save England—it has perished under the sword of tyrants, and why? Because it is the shield of the people against the power of such tyrants, and therefore it is the object of the enemy to disarm the people of that shield which is to protect them. And is it in Ireland that we are told licentiousness is the only disease that can be mortal to the press? Has he heard of nothing else that has been fatal to the freedom of publication? I know not whether the printer of the Northern Star may have heard of such things in his captivity; but I know that his wife and his children are well apprized, that a press may be destroyed in the open day, not by its own licentiousness, but by the licentiousness of a military force.

Gentlemen, I know you should hold a salutary check over the licentiousness of the press: it is necessary for its own sake; it is necessary lest the innocent should suffer; lest the public should lose a watchful sentinel, and lest the sword should be waved over the subject in oppression or injustice. But when you are guarding against its licentiousness, beware how you do that which may silence it altogether. Look to this paper, and let me ask, does it comport with the liberty of the press, if a bad public measure be adopted, to state to the people that it is a bad public measure? Is it competent to the press, if a wrong thing be done, to say it has been done?—Or is all question about truth or falsehood out of the case altogether? For there is not a word stated in the paper, that is not avowed from the bar.

If you are not bold enough or wise enough to consider the liberty of the press, in the

way I have been stating, that is, that it should be competent to the press to animadvert fully and strongly upon public measures, I should be sorry for the act of parliament which put you into a situation you had not fortitude or integrity to fill—that those cases were not still left to the cool dispassionate mind of the judges, rather than to a bigotted jury, lost and bewildered in the panic of the times, and not able to find their integrity or their understandings. You are inhabitants of a suffering country; let me exhort you, therefore, to protect the enjoyment of that liberty of public thought and of public speech, without which you are less than men; and to guard it on the one hand from abuses that must disgrace it, and on the other from that power from which you are its only natural refuge.

You are told this prosecution is instituted by the state in order to assert the liberty of the press. Gentlemen, the position starts a train of thought, of melancholy retrospect, and direful prospect, to which I did not think the learned counsel would have been very forward to commit your minds. It leads you naturally to reflect at what times, from what motives, and with what consequences the government has displayed its patriotism by prosecutions of this sort? As to the motives; does history give you a single instance in which the state has been provoked to these conflicts, except by the fear of truth, and by the love of vengeance? Have you ever seen the rulers of any country bring forward a prosecution from motives of filial piety, for libels upon their departed ancestors? Do you read that Elizabeth directed any of those state prosecutions against the libels which the divines of her times had written against her Catholic sister, or against the other libels which the same gentlemen had written against her Protestant father? No, gentlemen, we read of no such thing; but we know she did bring forward a prosecution from motives of personal resentment; and we know that a jury was found time-serving, and mean enough, to give a verdict, which she was ashamed to carry into effect. I said the learned counsel drew you back to the times that have been marked by these miserable conflicts. I see you turn your thoughts to the reign of the second James. I see you turn your eyes to those pages of governmental abandonment, of popular degradation, of expiring liberty, of merciless and sanguinary persecution; to that miserable period, in which the fallen and abject state of man might have been almost an argument in the mouth of the Atheist and the blasphemer, against the existence of an All-just and an All-wise First Cause; if the glorious era of the Revolution that followed it, had not refuted the impious inference, by showing that if man descends, it is not in his own proper motion; that it is with labour and with pain, and that he can continue to sink only until, by the force and pressure of the

descent, the spring of his immortal faculties acquires that recuperative energy and effort that hurries him as many miles aloft—he sinks but to rise again. It is at such periods as preceded the Revolution, that the state seeks for shelter in the destruction of the press; it is in a period like that, that the tyrant prepares for an attack upon the people, by destroying the liberty of the press; by taking away that shield of wisdom and of virtue, behind which the people are invulnerable; in whose pure and polished convex, ere the lifted blow has fallen, he beholds his own image, and is turned into stone. It is at those periods that the honest man dares not speak, because truth is too dreadful to be told; it is then humanity has no ears, because liberty has no tongue. It is then the proud man scorns to speak, but like a physician-baffled by the wayward excesses of a dying patient, retires indignantly from the bed of an unhappy wretch, whose ear is too fastidious to bear the sound of wholesome advice, whose palate is too debauched to bear the salutary bitter of the medicine that might redeem him; and therefore leaves him to the felonious piety of the slaves that talk to him of life, and strip him before he is cold.

I do not care, gentlemen, to exhaust too much of your attention, by following this subject through the last century with much minuteness; but the facts are too recent in your mind not to show you, that the liberty of the press and the liberty of the people sink and rise together; that the liberty of speaking and the liberty of acting have shared exactly the same fate. You must have observed in England that their fate has been the same in the successive vicissitudes of their late depression; and sorry am I to add, that this country has exhibited a melancholy proof of their inseparable destiny, through the various and farther stages of deterioration down to the period of their final extinction; when the constitution has given place to the sword, and the only printer in Ireland, who dares to speak for the people, is now a prisoner in the dock.

Gentlemen, the learned counsel has made the real subject of this prosecution so small a part of his statement, and has led you into so wide a range, certainly as necessary to the object as inapplicable to the subject of this prosecution; that I trust you will think me excusable in having somewhat followed his example. Glad am I to find that I have the authority of the same example for coming at last to what ought to be the only object of this trial.

This, gentlemen, is a charge made, in very strong language, against the lord lieutenant of Ireland; he is charged with having grossly and inhumanly denied the mercy of the crown, where the writer alleges it ought to have been extended. Mercy is one of the prerogatives of the crown—a great trust reposed in the crown for the benefit of the people;—it is

committed to the wisdom and discretion of majesty—a discretion to be exercised like the discretion of a court of justice in the spirit of the law and the constitution, “*discernere per legem quid sit justum*,” to decree according to the laws of eternal justice; and where those laws require an exercise of the trust, it is only a discharge of the great duty which the king owes the people; for he is sworn to administer justice in mercy.

The facts are not controverted. It has been asserted that their truth or falsehood is indifferent, and they are shortly these, as they appear in this publication. A person of the name of William Orr was indicted for having administered the oath of a United Irishman: Every man knows what that oath is; that it is simply an engagement, first, to promote a brotherhood of affection among men of all religious distinctions; secondly, to labour for a parliamentary reform; and thirdly, an obligation of secrecy, which was added to it when the convention law made it criminal and punishable to meet by any public delegation for that purpose. After remaining upwards of a year in gaol, Mr. Orr was brought to trial, was, specially prosecuted by the crown, and sworn against by a common informer of the name of Wheatly, who was the only witness.

Mr. Attorney General.—The fact is not so.

Mr. Curran.—I do recollect there was a second witness, but his testimony did not go to the material parts of the case. Wheatly, the principal witness, had himself taken the obligation, and upon his testimony, Mr. Orr was convicted under the Insurrection act, which makes the administering such an obligation a felony of death. The jury recommended him to mercy; the judge, with the humanity becoming his character, transmitted the recommendation to the noble prosecutor in this case. Two of the jurors made solemn affidavit in court that liquor had been conveyed into their room; that they were brutally threatened by some of their fellow jurors with capital prosecution if they did not find the prisoner guilty; and that under the impression of those threats, and worn down by watching and intoxication, they had given a verdict of guilty against him, though they believed him in their conscience to be innocent. It is also stated that further inquiries were made, which ended in a discovery of the infamous life and character of the informer; that a respite was therefore sent once, and twice, and thrice, to give time as Mr. Attorney-general has stated, for his excellency to consider whether mercy could be extended to him or not; and that with a knowledge of all these circumstances, his excellency did finally determine that mercy should not be extended to him, and that he was accordingly executed upon that verdict. Of this publication, which the indictment charges to be false and seditious, Mr. Attorney-general is pleased to say, that the design of it is to bring the courts of justice into contempt. As to this point of fact, gentlemen, I beg to set you right.

To the administration of justice, so far as it relates to the judges, this publication has not even an allusion in any part mentioned in this indictment; it relates to a department of justice, that cannot begin until the duty of the judge closes. Sorry should I be, that with respect to this unfortunate man any censure should be flung on those judges who presided at this trial, with the mildness and temper that became them, upon so awful an occasion as the trial of life and death. Sure am I, that if they had been charged with inhumanity or injustice, and if they had condescended at all to prosecute the reviler, they would not have come forward in the face of the public to say, as has been said this day, that it was immaterial whether the charge was true or not. Sure I am, their first object would have been to show that it was false, and readily should I have been an eye-witness of the fact, to have discharged the debt of ancient friendship, of private respect, and of public duty, and upon my oath to have repelled the falsehood of such an imputation. Upon this subject, gentlemen, the presence of these venerable judges restrains what I might otherwise have said, nor should I have named them at all if I had not been forced to do so, and merely to deceive you if you have been made to believe their characters to have any community of cause whatever with the lord lieutenant of Ireland. To him alone the charge is confined, and against him it is made, as strongly, I suppose, as the writer could find words to express it. It is alleged that the viceroy of Ireland has cruelly abused the prerogative of royal mercy, in suffering a man under such circumstances to perish like a common malefactor. For this Mr. Attorney-general calls for your conviction as a false and scandalous libel, and after stating himself every fact that I have repeated to you, either from his statement, or from the evidence, he tells you that you ought to find it false and scandalous, though he almost in words admits it is not false, and has resisted the admission of the evidence by which we offered to prove every word of it to be true.

Gentlemen, there is no evidence laid before you, to contradict the charge, and therefore I am at liberty to take it up in this way, that the writer thought himself warrantable in asserting what he did. Therefore the case comes to this: here was a verdict blackened by the disavowal of two of the persons who found it; the jury recommend; the witness is impeached—and after all, the convict is led out to a public execution. That is the fact and ground upon which the writer charges the person in whom the executive power is vested, with not having performed his duty as he ought.

Gentlemen, I protest to God, I scarcely know how to speak upon this subject. Was it cruel to execute the man? That is not the question. The question is not, whether such strong expressions ought to be used; but the question is, are you warranted in calling the

paper a false, scandalous, and seditious libel, if the writer, under the impressions I have mentioned, thought himself authorized in point of fact in stating it?

And here, gentlemen, give me leave to remind you of the parties before you. The traverser is a printer, who follows that profession for bread, and who at a time of great public misery and terror, when the people are restrained by law from debating under any delegated form; when the few constituents that we have are prevented by force from meeting in their own persons to deliberate, or to petition; when every other newspaper in Ireland is put down by force, or purchased by the administration (though here, gentlemen, perhaps I ought to beg your pardon for stating without authority; I recollect, when we attempted to examine as to the number of newspapers in the pay of the Castle, that the evidence was objected to); at a season like this, Mr. Finerty has had the courage, perhaps the folly, to print the publication in question, from no motive under Heaven of malice, or of vengeance, but in the mere duty which he owes to his family and to the public.

His prosecutor is the king's minister in Ireland; in that character does the learned gentleman mean to say, that his conduct is not a fair subject of public observation? What is the liberty of the press? If government do improper things, is the great inquisitor of the press to remain gagged and blind? Let me not be understood as uttering any sentiment of my own as upon any authority of my own. In this place I feel I have no right to do so. The subject matter and the observations naturally arising therefrom form the full extent of my duty and situation. Do you think that the fact charged was a cruel and sanguinary exercise of the delegated power of mercy? If it was, do you think it criminal in any man to say to the public, that he thought so? Or is the very excess of the atrocity to give the silence of the grave to the transaction? Are you to confine the press to the mere suburbs of authority, and not suffer it to approach that citadel where power and where abuse so often dwell together? Where does the learned counsel find his authority for that in the law, or the practice of the sister country? Have the virtues or the exalted station, or the general love of his people preserved the sacred person, even of the royal master of the prosecutor from the asperity and the intemperance of public censure, unfounded as it ever must be, with any personal respect to his majesty, in justice or truth? Have the gigantic abilities of Mr. Pitt—have the more gigantic talents of his great antagonist Mr. Fox, protected either of them from the insolent familiarity, and for aught I know, the injustice with which writers have treated them? What latitude of invective has the king's minister escaped upon the subject of the present unhappy war? Is there an epithet of contumely, or of reproach, that hatred, or that fancy could suggest that

is not publicly lavished upon them. Do you not find the words, advocate of despotism, robber of the public treasure, murderer of the king's subjects, debaucher of the public morality, degrader of the constitution, tarnisher of the British glory, destroyer of the British empire, by frequency of use, lose all meaning whatsoever, and dwindle into terms, not of any peculiar reproach, but of mere ordinary appellation? And why, gentlemen, is this permitted in that country? I'll tell you why; because in that country, they are yet wise enough to see, that the measures of the state are the proper subjects for the freedom of the press: that the principles relating to personal slander do not apply to rulers, or to ministers; that to punish an attack upon a public minister, without any regard to truth, but merely because of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, I pray you, is likely to happen in such a case? Is it the tendency of such publications to provoke Mr. Pitt or Mr. Dundas to break the head of the writer, if they should happen to meet him? No, gentlemen, in that country this freedom is exercised, because the people feel it to be their right; and it is wisely suffered to pass by the state, from a consciousness, that it would be vain to oppose it; a consciousness confirmed by the event of every incautious experiment. It is suffered to pass, from a conviction, that, in a court of justice at least, the bulwarks of the constitution will not be tamely surrendered to the state, and that the intended victim, whether clothed in the humble guise of honest industry, or decked in the honours of genius and virtue and philosophy: whether a Hardy, or a Tooke, will find certain protection in the honesty and spirit of an English jury.

But, gentlemen, I suppose Mr. Attorney-general will scarcely wish to carry his doctrine altogether so far. Indeed, I remember, he declared himself a most zealous advocate for the liberty of the press. I may, therefore, even according to him, presume to make some observations on the conduct of the existing government. I should wish to know how far the attorney general supposes it to extend? Is it to the composition of lampoons and madrigals, to be sung down the grates by ragged ballad-mongers, to kitchen-maids and footmen? I will not suppose, that he means to confine it to those ebullitions of Billingsgate; to those cataracts of ribaldry and scurrillity that are daily spouting upon the miseries of our wretched fellow sufferers, and the unavailing efforts of those who have laboured in their cause. Does he say, that the press must be the repository for adulation upon the government, and calumny upon the people? Does he say, that the press shall only supply a salve for those spots and pimples which appear upon the surface, but must not dare to explore the recesses of the heart to which that deleterious poison has penetrated of which the effects are death? I will not suppose that he

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confines it to the poetic licence of a birth-day ode, or a lampoon upon the people; in which case I should entirely agree with him, that the truth or the falsehood is as perfectly immaterial to the law, as it is to the laureat; as perfectly unrestrained by the law of the land as it is by any law of decency or shame, of modesty or decorum. But as to the privilege of censure or blame, I am sorry that the learned gentleman has not favoured you with his notion of the liberty of the press. Suppose an Irish viceroy acts a very little absurdly; may the press venture to be a little respectfully comical upon that absurdity? The learned counsel does not, at least in terms, give a negative to that. But let me treat you honestly, and go farther to a more material point. Suppose an Irish viceroy does an act that brings scandal upon his master; that fills the mind of a reasonable man with the fear of approaching despotism, that leaves no hope to the people of preserving themselves and their children from chains but in common confederacy for common safety. What is an honest man in that case to do? I am sorry *the right honourable advocate for the liberty of the press* has not told you his opinion, at least in any express words. I will, therefore, venture to give you my far humbler thought upon the subject. I think an honest man ought to tell the people frankly and boldly of their peril; and I must say I can imagine no villainy greater than that of his holding a traitorous silence at such a crisis, except the villainy and baseness of prosecuting him, or of finding him guilty for such an honest discharge of his public duty. Is he to suffer the sword to fall upon the heads of his fellow citizens without giving them notice of the danger: and is he to be punished for that conduct by which their lives may have been saved? No, gentlemen, that is not the doctrine of our law or our constitution. And I found myself upon the known principle of the Revolution of England, namely, that the crown itself may be abdicated by certain abuses of the trust reposed, and that there are possible excesses of arbitrary power, which it is not only the right, but the bounden duty of every honest man to resist at the risk of his fortune and his life.—Now, gentlemen, if this reasoning be admitted, and it cannot be denied, if there be any possible event in which the people are obliged to look only to themselves, and are justified in doing so—can you be so absurd as to say, that it is lawful for the people to act upon it, when it unfortunately does arrive, but that it is criminal in any man to tell them that the miserable event has actually arrived, or is imminently approaching? Far am I, gentlemen, from insinuating, that (extreme as it is) our misery has been matured into any deplorable crisis of this kind, from which I pray, that the Almighty God may for ever preserve us! But I am putting my principle upon the strongest ground, and most favourable to my opponents, namely, that it never

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can be criminal to say any thing of the government but what is false, and I put this in the extreme, in order to demonstrate to you *à fortiori*, that the privilege of speaking truth to the people, which holds in the last extremity, must also obtain in every stage of inferior importance; and that however a court may have decided before the late act, that the truth was immaterial in a case of libel, since that act no honest jury can be governed by such a principle.

Be pleased now, gentlemen, to consider the grounds upon which this publication is called a libel, and criminal. Mr. Attorney-general tells you it tends to excite sedition and insurrection. Let me again remind you, that the truth of this charge is not denied by the noble prosecutor. What is it then, that tends to excite sedition and insurrection? "The act that is charged upon the prosecutor, and is not attempted to be denied." And, gracious God! gentlemen of the jury, is the public statement of the king's representative this? "I have done a deed that must fill the mind of every feeling or thinking man with horror and indignation, that must alienate every man that knows it from the king's government, and endanger the separation of this distracted empire; the traverser has had the guilt of publishing this fact, which I myself acknowledge, and I pray you to find him guilty." Is this the case which the lord lieutenant of Ireland brings forward? Is this the principle for which he ventures, at a dreadful crisis like the present, to contend in a court of justice? Is this the picture which he wishes to hold out of himself to the justice and humanity of his own countrymen? Is this the history which he wishes to be read by the poor Irishman of the South and of the North, by the sister nation and the common enemy?

No, gentlemen, he cannot hold that language; with the profoundest respect, let me (and do you by your verdict) defend his excellency, even against his own opinion and his own reasoning. It is said, this paper tends to sedition and insurrection—upon what ground can such an idea be supported?—after the multitudes who have perished in this unhappy land within the last three years, and which unhappiness has been borne with a patience unparalleled in the history of nations, can any man suppose that the fate of a single individual could lead to resistance or insurrection?—But suppose that it might, what ought to be the conduct of an honest man at such a season? should it not be to apprise the government and the country of the approaching danger?—should it not be to say to the viceroy, you will drive the people to madness if you persevere in such bloody councils: you will alienate the Irish nation; you will distract the common force; you will invite the common enemy. Should not an honest man say to the people—"the measure of your affliction is great, but you need not resort for remedy to any desperate expedients—If the

king's minister is defective in humanity or wisdom, his royal master and your beloved sovereign is abounding in both;" at such a moment can you be so senseless as not to feel, that any one of you ought to hold such language?—or is it possible you could be so infatuated as to punish the man who was honest enough to hold it?—or is it possible that you could bring yourselves to say to your country when the measures of government are pregnant with danger and impending mischief—that at such a season, the press ought to sleep upon its post, or sound nothing but adulation and praise, acting like the perfidious watchman on his round, who sees the robber wrenching the bolts, or the flames bursting from the windows, while the inhabitant is wrapt in sleep, and cries out, "That the morning is fair, and all is well."

If such be your notions of the duty of the press, give in your verdict—a verdict which tells the people, they have not leave to speak—where a contrary verdict given with boldness, might save the lives of uncounted thousands.—Proclaim to Europe, that upon a subject like this, in a contest between mercy and a want of mercy and the sufferings of the people, you have shrunk from your duty. Compare your conduct with that of the juries in England and see how you will stand the examination—see whether you do an honest or a worthy act, by putting down the only paper which exists in Ireland, and by closing for ever all discussion upon public measures; gentlemen, you ought to consider, that man is subject to a number of restless passions. What is the state of this country? Agitated from one end to the other upon great national points, whether right or wrong I will not now enquire, but do you say, they shall not be spoken of? In England, you see the utmost extravagance of licentiousness indulged: Here the representative of the crown says, that mercy shall not be dispensed, and will you proclaim, that no man shall say it ought? What is the consequence? That you suffer those contending passions to burn with ungovernable fury, and refuse to the public heat even the chance of being cooled or ventilated by the unobstructed course of public sentiment and public discussion.

On this part of the case I shall only put one question to you. I do not affect to say it is similar in all its points; I do not affect to compare the humble fortunes of Mr. Orr with the sainted names of Russel or Sydney; still less am I willing to find any likeness between the present period and the year 1683. But I will put a question to you, completely parallel in principle. When the unhappy and misguided monarch of that day had shed the sacred blood, which their noble hearts had matured into a fit cement of revolution, if any honest Englishman had been brought to trial for daring to proclaim to the world his abhorrence of such a deed, what would you have thought of the English jury that could have

said, "we know in our hearts that what he said, was true and honest; but we will say upon our oaths, that it was false and criminal, and we will by that base subserviency add another item to the catalogue of public wrongs, and another argument for the necessity of an appeal to heaven for redress?"

Gentlemen, I am perfectly aware that what I say may be easily misconstrued, but if you listen to me with the same fairness that I address you, I cannot be misunderstood. When I show you the full extent of your political rights and remedies; when I answer those slanderers of British liberty, who degrade the monarch into a despot, and the subject into a slave; who pervert the steadfastness of law into the waywardness of will; when I show you the inestimable stores of political wealth so dearly acquired by our ancestors, and so solemnly bequeathed; and when I show you how much of that precious inheritance has yet survived all the prodigality of their posterity. I am far from saying that I stand in need of it all upon the present occasion. No, gentlemen, far am I indeed from such a sentiment. No man more deeply than myself deploras the present melancholy state of our unhappy country. Neither does any man more fervently wish for the return of peace and tranquillity, through the natural channels of mercy and of justice. I have seen too much of force and of violence to hope much good from the continuance of them on one side, or retaliation from another. I have of late seen too much of political rebuilding, not to have observed that to demolish is not the shortest way to repair. It is with pain and anguish that I should search for the miserable right of breaking ancient ties, or going in quest of new relations, or untried adventures. No, gentlemen, the case of my client rests not upon these sad privileges of despair. I trust that as to the fact, namely, the intention of exciting insurrection, you must see it cannot be found in this publication; that it is the mere idle, unsupported imputation of malice, or panic, or falsehood. And that as to the law, so far has he been from transgressing the limits of the constitution, that whole regions lie between him and those limits which he has not trod; and which I pray to heaven it may never be necessary for any of us to tread.

Gentlemen, Mr. Attorney General has been pleased to open another battery upon this publication, which I do trust I shall silence, unless I flatter myself too much in supposing that hitherto my resistance has not been utterly unsuccessful. He abuses it for the foul and insolent familiarity of its address. I do clearly understand his idea; he considers the freedom of the press to be the license of offering that paltry adulation which no man ought to stoop to utter or to hear; he supposes the freedom of the press ought to be like the freedom of a king's jester, who instead of reproving the faults of which majesty ought to be

ashamed, is base and cunning enough, under the mask of servile and adulatory censure, to stroke down and pamper those vices of which it is foolish enough to be vain. He would not have the press presume to tell the viceroy, that the prerogative of mercy is a trust for the benefit of the subject, and not a gaudy feather stuck into the diadem to shake in the wind, and by the waving of the gorgeous plumage to amuse the vanity of the wearer. He would not have it to say to him that the discretion of the crown as to mercy is like the discretion of a court of justice as to law, and that in the one case as well as the other, wherever the propriety of the exercise of it appears, it is equally a matter of right. He would have the press all fierceness to the people, and all sycophancy to power; he would have it consider the mad and phrenetic depopulations of authority like the awful and inscrutable dispensations of Providence, and say to the unfeeling and despotic spoiler in the blasphemous and insulted language of religious resignation—"the Lord hath given, and the Lord hath taken away, blessed be the name of the Lord!!!" But let me condense the generality of the learned gentleman's invective into questions that you can conceive. Does he mean that the air of this publication is rustic and uncourtly? Does he mean to say, that because the Poet Laureate might not approve the expression, you are to find the traverser guilty? Does he mean, that when Marcus presumed to ascend the steps of the castle, and to address the viceroy, he did not turn out his toes as he ought to have done? But, gentlemen, you are not a jury of dancing-masters:—or does the learned gentleman mean that the language is coarse and vulgar? If this be his complaint, my client has but a poor advocate. I do not pretend to be a mighty grammarian or a formidable critic; it may be said, perhaps with truth, that the language is in some places disrespectful—but, gentlemen, I look not to the garb—I look to the man; and if I find humanity in the lowest station, pining over sufferings and breaking into indignation at the fate of others—if I see even ragged poverty "grumbling pity" at calamity;—I love such feelings, I love such men, and

"I could hug the greasy rogues they please me."

But, gentlemen, you are not called upon as grammarians or critics. You are called upon to protect the government against insurrection, not censure, and in the discharge of that duty, I would beg leave to suggest to you in serious humility, that a free press can be supported only by the ardour of men who feel the prompting sting of real or supposed capacity, who write from the enthusiasm of virtue, or the ambition of praise, and over whom, if you exercise the rigour of grammatical censorship, you will inspire them with as mean an opinion of your integrity as of your wisdom, and inevi-

tably drive them from their post; and if you do so, rely upon it, you will reduce the spirit of publication, and with it, the press of this country, to what it for a long interval has been, the register of births, and fairs, and funerals, and the general abuse of the people and their friends.

But, gentlemen, in order to bring this charge of insolence and vulgarity to the test, give me leave to ask you, whether you know of any language which could have adequately described the idea of mercy denied where it ought to have been granted—or of any phrase vigorous enough to convey the indignation which an honest man would have felt upon such a subject? Let me beg of you for a moment to suppose, that any one of you had been the writer of this very severe expostulation with the viceroy, and that you had been the witness of the whole progress of this never to be forgotten catastrophe—Let me suppose that you had known the charge upon which Mr. Orr was apprehended, the charge of abjuring that bigotry, which had torn and disgraced his country, of pledging himself to restore the people to their place in the constitution, and of binding himself never to be the betrayer of his fellow labourers in that enterprise, that you had seen him upon that charge removed from his industry, and confined in a gaol, that through the slow and lingering progress of twelve tedious months you had seen him confined in a dungeon, shut out from the common use of air and of his own limbs, that day after day you had marked the unhappy captive, cheered by no sound, but the cries of his family, or the clanking of his chains, that you had seen him at last brought to his trial, that you had seen the vile and perjured informer deposing against his life, that you had seen the drunken, and worn out and terrified jury give in a verdict of death; that you had seen the same jury, when their returning sobriety had brought back their reason, prostrate themselves before the humanity of the Bench, and pray that the mercy of the crown might save their characters from the reproach of an involuntary crime, their consciences from the torture of eternal self condemnation, and their souls from the indelible stain of innocent blood.—Let me suppose, that you had seen the respite given, and that contrite and honest recommendation transmitted to that seat, where mercy was presumed to dwell, that new and unheard-of crimes are discovered against the informer, that the royal mercy seems to relent, and that a new respite is sent to the prisoner, that time is taken, as the learned counsel for the crown has expressed it, to see, whether mercy could be extended, or not; that after that period of lingering deliberation passed, a third respite is transmitted, that the unhappy captive himself feels the cheering hope of being restored to a family that he had adored, to a character that he had never stained, and to a country that he had ever loved; that you had seen his

wife and his children upon their knees, giving those tears to gratitude, which their locked and frozen hearts could not give to anguish and despair, and imploring the blessings of Eternal Providence upon his head, who had graciously spared the father, and restored him to his children.

"Alas, nor wife, nor children more shall be behold,

"Nor friends, nor sacred home!"

Often did the weary dove return to the window of his ark, but the olive leaf was to him no sign that the waters had subsided. No seraph mercy unbars his dungeon, and leads him forth to light and life; but the minister of death hurries him to the scene of suffering and of shame; where, unmoved by the hostile array of artillery and armed men, collected together, to secure, or to insult, or to disturb him, he dies with a solemn declaration of his innocence, and utters his last breath in a prayer for the liberty of his country.

Let me now ask you, if any of you had addressed the public ear upon so foul and monstrous a subject, in what language would you have conveyed the feelings of horror and indignation? Would you have stooped to the meanness of qualified complaint? Would you have checked your feelings to search for courtly and gaudy language? Would you have been mean enough—but I entreat your forgiveness, I have already told you I do not think meanly of you; had I thought so meanly of you, I could not suffer my mind to commune with you as it has done; had I thought you that base and vile instrument, attuned by hope and fear into discord and falsehood, from whose vulgar string no groan of suffering could vibrate, no voice of integrity or honour could speak, let me honestly tell you, I should have scorned to fing my hand across it, I should have left it to a fitter minstrel. If, therefore, I do not grossly err in my opinion of you, I could invent no language upon such a subject as this, that must not lag behind the rapidity of your feelings, and that would not disgrace those feelings, if it attempted to describe them.

Gentlemen, I am not unconscious that the learned counsel for the crown seemed to address you with a confidence of a very different kind; he seemed to expect from you a kind and respectful sympathy with the feelings of the Castle, and the griefs of chafed authority; perhaps, gentlemen, he may know you better than I do; if he does, he has spoken to you as he ought; he has been right in telling you, that if the reprobation of this writer is weak, it is because his genius could not make it stronger; he has been right in telling you, that his language has not been braided and festooned as elegantly as it might; that he had not pinched the miserable pails of his phraseology, nor placed his patches and feathers with that correctness of military, which

became so exalted a person. If you agree with him, gentlemen of the jury, if you think that the man, who ventures at the hazard of his own life to rescue from the deep the drowned honour of his country, must not presume upon the guilty familiarity of plucking it up by the locks, I have no more to say: do a courteous thing, upright and honest jurors! Sworn integrity of your country! find a civil and obliging verdict against the printer! And when you have done so, march through the ranks of your fellow citizens to your own homes, and bear their looks as you pass along; retire to the bosom of your families and your children, and when you are presiding over the morality of the parental board, tell those infants, who are to be the future men of Ireland, the history of this day. Form their young minds by your precepts, and confirm those precepts by your own example, teach them how discreetly allegiance may be perjured on the table, or loyalty be forsworn in the jury box; and when you have done so, tell them the story of Orr;—tell them of his captivity, of his children, of his crime, of his hopes, of his disappointments, of his courage and of his death; and when you find your little bearers hanging from your lips, when you see their eyes overflow with sympathy and sorrow, and their young hearts bursting with the pangs of anticipated orphanage, tell them, that you had the boldness and the justice to stigmatize the monster—who had dared to publish the transaction!

Gentlemen, I believe I told you before, that the conduct of the vice-roy forms but a small part indeed of the subject of this trial. If the vindication of his mere personal character had been, as it ought to have been, the sole object of this prosecution, I should have felt the most respectful regret at seeing a person of his high consideration come forward in a court of public justice, in one and the same breath to admit the truth, and to demand the punishment of a publication like the present, to prevent the chance he might have had of such an accusation being disbelieved, and by a prosecution like this to give to the passing stricture of a newspaper, that life and body and action and reality that proves it to all mankind, and makes the record of it indelible. Even as it is, I do own I feel the utmost concern, that his name should have been soiled by being mixed in a question of which it is the mere pretext and scape goat. Mr. Attorney General was too wise to state to you the real question, or the object which he wished to be answered by your verdict. Do you remember, that he was pleased to say, that this publication was a base and foul misrepresentation of the virtue and wisdom of the government, and a false and audacious statement to the world that the king's government in Ireland was base enough to pay informers for taking away the lives of the people? When I heard this statement to-day, I doubted whether you were aware of its

tendency or not. It is now necessary that I should explain it to you more at large.

You cannot be ignorant of the great conflict between prerogative and privilege which hath convulsed the country for the last fifteen years; when I say privilege, you cannot suppose that I mean the privilege of the House of Commons, I mean the privileges of the people. You are no strangers to the various modes by which the people laboured to approach their object. Delegations, conventions, remonstrances, resolutions, petitions to the parliament, petitions to the throne. It might not be decorous in this place to state to you with any acrimony, the various modes of resistance that were employed on the other side; but you all of you seem old enough to remember the variety of acts of parliament that have been made, by which the people were deprived, session after session, of what they had supposed to be the known and established fundamental rights of the constitution; the right of public debate, the right of public petition, the right of bail, the right of trial, the right of arms for self-defence; until the last, even the relics of popular privilege became superseded by a military force; the press was extinguished; and the state found its last entrenchment in the grave of the constitution. As little can you be strangers to the tremendous confederations of hundreds of thousands of our countrymen, of the nature and the objects of which such a variety of opinions have been propagated and entertained.

The writer of this letter had presumed to censure the recall of lord Fitzwilliam, as well as the measures of the present viceroy. Into this subject I do not enter; but you cannot yourselves forget that the conciliatory measures of the former noble lord had produced an almost miraculous unanimity in this country; and much do I regret, and sure I am that it is not without pain you can reflect, how unfortunately the conduct of his successor has terminated. His intentions might have been the best; I neither know them nor condemn them, but to their terrible effects you cannot be blind. Every new act of coercion has been followed by some new symptoms of discontent, and every new attack provoked some new paroxysm of resentment or some new combination of resistance. In this deplorable state of affairs, convulsed and distracted within, and menaced by a most formidable enemy from without, it was thought that public safety might be found in union and conciliation, and repeated applications were made to the parliament of this kingdom for a calm inquiry into the complaints of the people; these applications were made in vain. Impressed by the same motives, Mr. Fox* brought the same subject before the Commons of England, and ventured to ascribe the perilous state of Ireland to the severity of its

* See the New Parl. Hist. vol. 33, p. 140.

government. Even his stupendous abilities, excited by the liveliest sympathy with our sufferings, and animated by the most ardent zeal to restore the strength with the union of the empire, were repeatedly exerted without success. The fact of discontent was denied; the fact of coercion was denied; and the consequence was, the coercion became more implacable, and the discontent more threatening and irreconcilable. A similar application was made in the beginning of this session in the Lords of Great Britain by our illustrious countryman,* of whom I do not wonder that my learned friend should have observed, how much virtue can cling pedigree into the shade; or how much the transient honour of a body inherited from man, is obscured by the lustre of an intellect derived from God. He, after being an eye-witness of this country, presented the miserable picture of what he had seen; and to the astonishment of every man in Ireland, the existence of those facts was ventured to be denied; the conduct of the present viceroy was justified and applauded; and the necessity of continuing that conduct was insisted upon, as the only means of preserving the constitution, the peace, and the prosperity of Ireland. The moment the learned counsel had talked of this publication as a false statement of the conduct of the government, and the condition of the people, no man could be at a loss to see that the awful question, which had been dismissed from the Commons of Ireland, and from the Lords and Commons of Great Britain, is now brought forward to be tried by a side wind, and in a collateral way, by a criminal prosecution. Let me ask you then, are you prepared to say upon your oath, that those measures of coercion, which are daily practised, are absolutely necessary, and ought to be continued? It is not upon Finerty you are sitting in judgment; but you are sitting in judgment upon the lives and liberties of the inhabitants of more than half of Ireland. You are to say, that it is a foul proceeding to condemn the government of Ireland; that it is a foul act, founded in foul motives, and originating in falsehood and sedition; that it is an attack upon a government under which the people are prosperous and happy; that justice is administered with mercy; that the statements made in Great Britain are false; are the effusions of party or of discontent; that all is mildness and tranquillity; that there are no burnings, no transportations; that you never travel by the light of conflagrations; that the gaols are not crowded month after month, from which prisoners are taken out not for trial, but for embarkation!—These are the questions upon which I say, you must virtually decide. It is in vain, that the counsel for the crown may

* The Earl of Moira, afterwards Marquis of Hastings. See the New Parl. Hist. vol. 23, p. 1058.

tell you I am misrepresenting the case; that I am endeavouring to raise false fears, and to take advantage of your passions; that the question is, whether this paper be a libel or not, and that the circumstances of the country have nothing to do with it. Such assertions must be vain: the statement of the counsel for the crown has forced the introduction of those important topics, and I appeal to your own hearts, whether the country is misrepresented, and whether the government is misrepresented.

I tell you therefore, gentlemen of the jury, it is not with respect to Mr. Orr or Mr. Finerty that your verdict is now sought; you are called upon, on your oaths to say, that the government is wise and merciful; that the people are prosperous and happy; that military law ought to be continued; that the constitution could not with safety be restored to Ireland; and that the statements of a contrary import, by your advocates in either country were libellous and false. I tell you these are the questions, and I ask you, can you have the front to give the expected answer in the face of a community who know the country as well as you do? Let me ask you how you could reconcile with such a verdict the gaols, the tenders, the gibbets, the conflagrations, the murders, the proclamations that we hear of every day in the streets, and see every day in the country. What are the processions of the learned counsel himself circuit after circuit? Merciful God! what is the state of Ireland, and where shall you find the wretched inhabitant of this land? You may find him perhaps in a gaol, the only place of security, I had almost said of ordinary habitation! If you do not find him there, you may see him flying with his family from the flames of his own dwelling; lighted to his dungeon by the conflagration of his hovel. Or you may find his bones bleaching on the green fields of his country; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests, less savage than his persecutors, that drift him to a returnless distance from his family and his home, without charge, or trial, or sentence! Is this a foul misrepresentation? Or can you, with these facts ringing in your ears and staring you in the face, say upon your oaths they do not exist? You are called upon in defiance of shame, of truth or honour, to deny the sufferings under which you groan, and to flatter the persecution that tramples you under foot and grinds you to powder!—Gentlemen! I am not accustomed to speak of circumstances of this kind, and though familiarized as I have been to them, when I come to speak of them, my power fails me; my voice dies within me; I am not able to call upon you: it is now I ought to have strength; it is now I ought to have energy and voice; but I have none. I am like the unfortunate state of the country, perhaps like you. This is the time in which I ought to speak if I can, or be dumb.

for ever; in which if you do not speak as you ought, you ought to be dumb for ever.

What next is complained of by the learned counsel? That this publication asserts, that the conviction of Mr. Orr was obtained by bribes administered by government to an informer, by whose evidence he fell. As to that, I beseech you, gentlemen, to consider whether it be a candid representation; is the learned counsel warranted by the fact? The writer does not say, that it was a bribe administered personally, or directly by the lord lieutenant to that witness. The sentence carries no such meaning; if it did, I would rather lay down my brief and quit the court, than rise the advocate of a filthy slander of that kind. But that was not the meaning of the writer: the writer means, that informers are brought forward in the present unfortunate state of the country by the hopes of hire and payment. Is that a foul and false assertion? or will you upon your oaths say to the sister country, that there are no such abominable instruments of destruction as informers used in the state prosecutions in Ireland? Let me ask you honestly what do you feel, when in my hearing—when in the face of this audience, you are called upon to give a verdict, that every man of us and every man of you knows by the testimony of your own eyes to be utterly and absolutely false? I speak not now of the public proclamations for informers, with a promise of secrecy and of extravagant reward;—I speak not of those unfortunate wretches, who have been so often transferred from the table to the dock, and from the dock to the pillory;—I speak of what your own eyes have seen day after day during the course of this commission, from the box where you are now sitting; the number of horrid miscreants, who avowed upon their oaths, that they had come from the seat of government, from the very chambers of the Castle, where they had been worked upon by the fear of death and the hopes of compensation to give evidence against their fellows; that the mild the wholesome and merciful councils of this government are holden over those catacombs of living death, where the wretch that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up a witness.

Is this fancy, or is it fact? Have you not seen him, after his resurrection from that tomb, after having been dug out of the region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both? Have you not marked when he entered, how the stormy wave of the multitude retired at his approach? Have you not marked how the human heart bowed to the awful supremacy of his power, in the undissembled homage of deferential horror? How his glance, like the lightning of heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted

wretch of woe and death; a death which no innocence can escape, no art elude, no force resist, no antidote prevent: there was an antidote—a juror's oath—but even that adamantine chain, which bound the integrity of man to the throne of eternal justice, is solved and molten in the breath that issues from the informer's mouth; conscience swings from her moorings, and the appalled and affrighted juror speaks what his soul abhors, and consults his own safety in the surrender of the victim:—

—Et quæ sibi quisque timebat,
Unius in miseri exitium conversa tulere.

Gentlemen, I feel I must have tired your patience, but I have been forced into this length by the prosecutor, who has thought fit to introduce those extraordinary topics, and to bring a question of mere politics to trial under the form of a criminal prosecution. I cannot say I am surprised that this has been done, or that you should be solicited by the same inducements, and from the same motives, as if your verdict were a vote of approbation. I do not wonder that the government of Ireland should stand appalled at the state to which we are reduced. I wonder not that they should start at the public voice, and labour to stifle or contradict it. I wonder not that at this arduous crisis when the very existence of the empire is at stake, and when its strongest and most precious limb is not girt with the sword for battle, but pressed by the tourniquet for amputation; when they find the coldness of death already begun in those extremities where it never ends, that they are terrified at what they have done, and wish to say to the surviving parts of that empire, "they cannot say we did it." I wonder not that they should consider their conduct as no immaterial question for a court of criminal jurisdiction, and wish anxiously, as on an inquest of blood, for the kind acquittal of a friendly jury. I wonder not that they should wish to close the chasm they have opened by flinging you into the abyss. But trust me, my countrymen, you might perish in it, but you could not close it; trust me, if it is yet possible to close it, it can be done only by truth and honour; trust me, that such an effect could no more be wrought by the sacrifice of a jury, than by the sacrifice of Orr. As a state measure, the one would be as unwise and unavailing as the other; but while you are yet upon the brink, while you are yet visible, let me, before we part, remind you once more of your awful situation. The law upon this subject gives you supreme dominion. Hope not for much assistance from his lordship. On such occasions perhaps the duty of the Court is to be cold and neutral. I cannot but admire the dignity he has supported during this trial; I am grateful for his patience. But let me tell you, it is not his province to fan the sacred flame of patriotism in the jury-box. You are upon a great forward ground,

with the people at your back, and the government in your front; you have neither the disadvantages nor the excuses of juries a century ago. No, thank God, never was there a stronger characteristic distinction between those times, upon which no man can reflect without horror, and the present. You have seen this trial conducted with patience and mildness by the Court. We have now no Jefferies with scurvy and vulgar conceits to browbeat the prisoner, or perplex his counsel. Such has been the improvement of manners, and so calm the confidence of integrity, that during the defence of accused persons, the judges sit quietly, and show themselves worthy of their situation, by bearing with a mild and merciful patience, the little extravagancies of the bar, as you should bear with the little extravagancies of the press. The Court is mild and merciful, because if it did not give a temperate ear to passion, the prisoner could not have the benefit of the honest feelings of his advocate.

Let me then turn your eyes to that pattern of mildness in the bench. The press is your advocate; bear with its excess, bear with every thing but its bad intention. If it comes as a villainous slanderer, treat it as such; but if it endeavour to raise the honour and glory of the country, remember that you reduce its power to a non-entity if you stop its animadversions upon public measures; you should not check the efforts of genius, nor damp the ardour of patriotism. In vain will you desire the bird to soar, if you meanly or madly thief it from its plumage. Beware, lest under the pretence of hearing down the licentiousness of the press, you extinguish it altogether, beware how you rival the venal ferocity of those licentious miscreants who rob a printer of the means of bread, and claim from deluded royalty the reward of integrity and allegiance.

One word more, gentlemen, and I have done. I have been hitherto speaking of my client, let me say one word in favour of yourselves and the public. When the nation is sinking under the tyranny of debauched counsels, what is it that gives it a chance of being saved? It is that the voice of the public may reach even to the ear of the first personage in the state, that he may know what the people say. Let the patriot's heart be still animated by showing that you guard the liberty of the press when it speaks to power with zeal, however unaccompanied by ceremonial. You are now upon the edge of a precipice, to which not many steps must conduct you: stop before you arrive at it; while you are yet upon the brink, while you are yet visible, let me remind you that the people may at length find repose from their troubles, and that you have to choose whether you will be numbered among the instruments of their degradation or the means of their deliverance.

Gentlemen, I might say, what my learned colleague has said. I did not know that I should have had this duty to perform. I

thought I should have sat as an auditor, not appeared as an actor. I beseech you, if you think it right to give any consideration to the arguments I have offered, to consider them with the same honest candour with which they are meant. I cannot be supposed to be forgetful of my situation by introducing any private sentiments into this discussion. I know that men thinking long upon one subject may imagine they think right. I may impute the same infirmity to you;—but I feel strongly the reasons and basis of my own judgment.

Gentlemen, I conjure you in the name of your country, on the oath you have taken, and in the presence of the ever-living God, to reflect, that you have your character, your consciences, and perhaps the ultimate destiny of your country in your hands, that though the day may soon come when our ashes shall be scattered before the winds of heaven, yet the memory of what you do cannot die; it must carry down to your posterity your honour or your shame; in that awful name I do therefore again conjure you to have mercy upon your country and upon yourselves, and so to judge now as you shall hereafter be judged; and I do now submit the fate of my client, and of that country which we have yet in common, to your disposal.

REPLY.

Mr. *Prime Serjeant*.—My Lord, and Gentlemen of the Jury; However wearied and fatigued you must be at this advanced period of the day, of which there has been much unnecessary consumption, it becomes my duty to trespass upon you with some observations, rendered the more necessary by the singular manner in which my learned friends, the counsel for the traverser, have thought proper to conduct his defence, if his defence it can be called. For this the learned counsel have made some excuse; they told you they were unprepared; but though it were not the hacknied case, a libeller's defence, little preparation would serve their turn; hence, therefore, it cannot be that they have brought forward in his defence much of what they have heretofore, and in another place, imperfectly advanced in the accusation of others. The learned counsel who stated his case, set out with a well turned eulogium on the trial by jury, the sacred duty of the jurors, and the Court. He told you that with a jury to doubt, should be to acquit; that it was the bounden duty of the judge, that his honor and conscience called upon him, if he doubted, to recommend to mercy. I readily subscribe to a doctrine which I, in my humble sphere, have uniformly practised; but did it occur to the learned counsel, that his panegyric was the most pointed condemnation of that libel which made the sacred duty of the judge and jury the object of its calumny? Did it occur to him, that the excellence of the institution was the heaviest aggravation of the offence of

his client?—my learned friend did then, in the overflowing of his zeal in the defence of the traverser, indulge himself in a repetition of much that had been alleged by himself and others, elsewhere, and in strong and emphatic terms called your attention to the parliamentary conduct of a noble lord in another country; and in defence of the traverser, found occasion to pronounce a panegyric upon the blood of the Plantagenets,—how relevant it is for you to judge; but what is most singular, is, that, as if infected by the libel of which he undertook to be the defender, he seemed to forget the sacred duty of jurors. He read to you, as I collected, some passages from the reprobated libel, the letter of Junius to the king, and compared them with some passages of the libel in question, not, I acknowledge, to assert the innocence of either, but to show how far the one surpassed the other in malignity, and he then told you, what the conduct of the jury was upon the trial of the publisher of that libel, and called upon you, acting upon your oaths, to emulate their conduct by the return of a similar and reprobated verdict; indeed, each of the learned counsel, in his address to you, called upon you to imitate the conduct of juries in Great Britain, acting upon their oaths, and upon the evidence before them; the juries on the trial of Hardy, Thelwall, and others, were held out to you for imitation; was there no Irish jury worthy of your imitation?—were the verdicts of the juries who tried Jackson,* Weldon,† Dunn,‡ and a long list of traitors and conspirators, which have disgraced this once happy country ever questioned?—all convicted, though defended by the abilities of one of my learned friends.

It is natural that he at least should recur to the success of others, and not to his own defeats, for examples to his purpose. But if a jury were to regulate itself by any rule but that of evidence, national feeling would prefer a national example. Differing from the learned counsel for the traverser, I caution you against following any example; blot from your recollection any thing you may before this day have heard upon the subject; attend only to the evidence, respect the law, as it may be stated to you by the learned judge, and upon the evidence and the law exercise that discretion with which the constitution has entrusted you.

The learned counsel, who spoke to the evidence for the traverser, wished you to recollect much which he said, and to my astonishment, he omitted to request you to forget much also, for he set out with telling you that the times were commoved, and to tranquillize them, he arraigned, not the statute, that would be nothing—but the common law of the land; he censured that law which would not permit the traverser to give

evidence of the truth of the libellous matter, but he did not tell you as I do, that the libeller is thereby, and thereby only, secure against detection in the most libellous falsehood, and your own feelings will tell you that an inadmissible offer to prove its truth, is an aggravation of his offence. The learned counsel, as I conceive, mistook the law when he informed you, that the traverser had no right to challenge any of you, as his jurors, as he did the fact, when he stated that you were arrayed by an officer appointed by the crown, Why those observations? In compliment to the cause of his client, and to disparage, if possible, that verdict which he knew you, acting upon your oaths, must give. This therefore was to be marked as a state prosecution, your verdict was to be considered as the verdict of a jury, against whom no challenge lay, and arrayed by an officer of the nomination of the prosecutor—but as a lawyer, I tell you, that a challenge does lie, and that the sheriffs who returned you, are not nominated by the crown, or dependant on its approbation. As if infected by the spirit of the libel, the learned counsel, if I mistake not, has told you, that the security of a juror's oath was shaken, that juries capitulating with their fears, and to preserve their own lives, have complimented the informer with the lives of the accused, and to impress it upon the public mind, has had recourse to his classic treasures,

— Et quæ sibi quisque timebat

Unius in miseri exitium conversa tulere. You could they afford him no quotation, but one which contributed to lead a credulous nation to its ruin? The Trojans believed and were undone, and I trust that the learned counsel did not see the alarming mischief of the observation, and that he would upon reflection, wish it consigned to oblivion. Did the learned counsel think that such observations could deter men of honour and fortitude from a discharge of their duty, or that by the horror of his fancy pieces they could be frightened from a recollection of their oaths? The learned counsel has indulged himself in a splendid, but irrelevant declamation, and repetition of all those subjects, which for some time past have unfortunately agitated this once happy country, you have long since read them in the different prints, you have this day heard them, you may compare them; you have long and severely felt their effects.

But I owe it to our honourable profession to tell you, that much is allowable to counsel in the defence of the accused, it may be commendable in them to recur to and make use of every topic, however remotely connected, which may contribute to their success in the sacred duty which they have undertaken, and particularly if the case (like this) shall not admit of any defence.—Hence I trust it was and not to commove the country by franking into the world an impressive comment upon this libel, that that which you expected would have been the defence of the traverser, has

* See his trial, *antè*, vol. 25, p. 783.

† See his trial, p. 325, of this volume.

‡ See his trial, p. 330, of this volume.

been nothing more than a vindication of party and opinion, and a repetition of that arraignment of the government of the country which had been before often made by my learned friends, and as often answered and refuted, but from us, to whom your attention has been called as prosecuting for the crown, an attention which we confidently challenge, a different conduct is expected, we disdain all address, all inflammatory language; unadorned facts, plain common sense, the utmost good faith with the Court and the Jury are the indispensable duties of prosecutors for the crown. How conscientiously we have discharged those duties, let even the unfortunate men whom it was our painful duty to prosecute, declare, but I find that example leads me also from the subject proper for your consideration, you have already heard that the traverser is not brought before you upon a charge officially made by the attorney general, but upon a charge made by a grand jury of your county, acting and declaring upon their oaths, that the libel in question was published to molest and disturb the public peace and tranquillity of the kingdom, to disparage the administration of justice, and to represent the chief governor as acting inhumanly and wickedly in not extending mercy where he should, these conclusions of the grand jury you are not to adopt, unless the evidence which has been produced, shall upon consideration call upon you so to do, and if it does, I am confident that you will, regardless of the terror of the traverser with which my recollection tells me you were menaced.

Too successful have the enemies of this country been in their endeavours to indispose the people to their political situation, but there was one consoling hold, from which there had been no attempt to remove them, one comfort of which there had been no attempt made to deprive them, *their confidence in the administration of justice*; for the traverser it was reserved to make a daring attack upon the temple of justice and mercy, prophaning its altars, and reviling its ministers; the unfortunate traverser, the instrument of a party, some of them spectators possibly of the disgraceful situation in which he stands. The criminal code immediately affects the mass of the people, and for the traverser it was reserved to make the first attempt to desecrate the administration of criminal justice, and by vilifying the mild and merciful law of England, to prepare the minds of the mass of the people for a revolutionary tribunal, and its attendant guillotine.

The traverser has made an affidavit, that he is the sole proprietor of the paper in which this libel has appeared; I hope he is so, and that he did not recur to perjury, to qualify himself to be a libeller; there is a circumstance confirmatory of his affidavit; he has remained in confinement two months upon a bailable offence; it is scarcely possible, that he should be so deserted, and yet connected with others;

it is scarcely possible, that he should be of the brotherhood, and yet left in gaol so long; but if it is possible, and that he is only the ostensible partner in this alarming establishment, let his fate,—let his unbaited situation for two months, be a warning to those who may be solicited to lend their names to give currency to sedition; let them recollect that on the day of trial, no defence either was, or could be made for him; he had an host of lawyers of the first abilities; he had all the pride, pomp and circumstance of a distinguished libeller: his vanity may have been gratified by hearing himself connected with the topics of party here and in Great Britain, by finding himself joined in the same sentence with the names of Pitt and Fox, and finding his efforts connected with those of a noble lord in England; but if I might presume to judge, the noble lord will not feel himself much honoured by the alliance which has been formed for him, or pleased with the coadjutor assigned to him.

Having, I trust, if it was necessary, guarded you against the effects of those addresses, which have been made to you on the part of the traverser, it is for me to state to you, that there are two questions for your consideration—first, whether this libel has been published by the traverser? Much of your time, and that of the Court, has been taken up in the discussion of a question, which really did not arise. I never was so astonished as when I heard gentlemen of abilities and experience contend, that there was no evidence for your consideration with regard to the fact of publication. It has been proved, that in pursuance of the direction of the act for preserving the liberty of the press, an affidavit was made by a person assuming the name of Peter Finerty, and stating him to be the sole proprietor of the paper, intitled “*The Press*,” and stating the place of publication. The purchase of the paper was proved to have been made in Church-lane, the place referred to by the affidavit. The paper was incontrovertibly identified by the testimony of two witnesses. The traverser upon being arrested in the very house referred to by the affidavit, avowed himself to be the printer and publisher of the “*The Press*.” The law requires, that upon every change of property in a newspaper, such change should be stated by affidavit, and provides that unless this is so stated, the former proprietor should be responsible. It rests with you, gentlemen, upon this evidence to determine, whether the traverser was the publisher of the paper in question. The able and respected authority of the Court will, I presume to say, inform you, that the evidence is more satisfactory evidence than that which would arise from a multitude of hand-writing, and will inform you, that though the legislature, from the difficulty of obtaining satisfactory evidence against the publishers of libels, had substituted inferior, or secondary evidence, that it

was never intended to exclude the best; you are to determine what weight it ought to have; and prosecuting for the crown, I tell you, that if you have a rational doubt upon the point, you should acquit the traverser.

The evidence with respect to the question of publication being disposed of, it remains, secondly, to be considered, whether the paper is a libel? and if it be, with what intention it was published? The learned judge is bound by the law to give you his opinion, whether it is a libel or not: and having heard his opinion, the whole is open for your consideration. The learned counsel attempted to prove, that there was no charge made by the libel against the learned judge who presided at the trial, and endeavoured to draw your attention from that part of the libel, and to confine its malignity to an higher authority.

The first charge made by the indictment for this libel is—I am sorry to address you upon this subject, but I trust that I am addressing men not yet hardened; and if I am, though I can judge of—I cannot describe your feelings and indignation. The libel presumes to disparage the decision of an high and learned judge, and twelve men upon their oaths, where the life of a fellow creature was in question, and represents it a base and wicked murder, procured by perjury and terror. What is become of the natural milkiness of the Irish character? Surely you are not so habituated to blood, by the numerous convictions for treason, conspiracy and murder, which have been had, as to hear those words without that prompt and honest indignation which declares them false, mischievous, and wicked. The libel states: “the death of Mr. Orr the nation has pronounced one of the most sanguinary and savage acts that had disgraced the laws. In perjury, did you not hear, my lord, the verdict was given—perjury accompanied with terror, as terror has marked every step of your government. Vengeance and desolation were to fall on those who would not plunge themselves in blood.”—What? Gentlemen, have you heard of the trials for treason, murder, and for conspiracy to murder? If they have not blunted your feelings, you must feel that not only your country is disgraced, but human nature blasphemed by such a publication. It is however but just to say, that the publication has not been defended.

Gentlemen, it has been well and truly remarked, that no man will, without evidence, charge another with an internal crime, whose own heart does not tell him of the possibility of its commission.

The next paragraph in the paper to which I shall call your attention (and in truth this is the only libel I ever read, in which there was not some colourable paragraph), charges the lord lieutenant with a want of humanity, and it is a gross and monstrous aggravation of the libel to defend it in the manner you have seen; an attempt to mislead the jury and the people:

but I trust, that neither you nor the public are to be misled. The artifice is too obvious. An attempt has been made to submit to your consideration some affidavits alleged to have been made by some of the jury, in violation of that wholesome principle of law, which will not suffer the verdict of a jury given upon their oaths to be done away, or disparaged by their subsequent affidavits. See what the consequence would be. See whether your properties, your lives, or your honours would be safe, if that rule were to be departed from. You are acquitted this day by the verdict of a jury: when are you to be at ease, if the law admitted of the impeachment of such a verdict by subsequent affidavits? not in those days of terror when conspiracy and assassination are so busily employed, and so fatally successful. It is the established principle of the law, not to receive the affidavit of a juror disparaging himself and affirming his own turpitude; but here, you were told, the jurors assumed the complicated guilt of perjury and murder—there is no rule more essentially necessary to the peace, the welfare, and the happiness of civilized society. If such affidavits were made, charity induces me to believe, that the unhappy makers did, under the influence of terror, assume the guilt of murder and perjury.

The libel states that the chief governor denied mercy where it ought to be granted. Will any man entertain a doubt that it would be a libel to charge him with a verdict in a case of the slightest import against his oath? and here is a charge of nothing less than wicked murder under the form of law, by a denial of mercy! and yet you, gentlemen, are told that this is not a libel.

The learned judge has, in ruling a question of evidence, stated to you, what the law of England has been to this day, and has informed you, that the great question for your consideration was—“What was the object and intention of the publication?” Great God! will any man, who hears me, believe, that if for any one of those unfortunate creatures that are from day to day brought to this bar, a cool and well-founded application for mercy was made, that it would be denied? If any man so believes, I thank God that he has formed my mind of different materials; and I feel a confidence, that I address a jury too just, and too conscientious to impute to another that against which their own nature revolts—a denial of mercy, where it should be granted! It would be a murder, aggravated by perjury; for the chief governor is bound by an oath as solemn and as binding as that under which you shall pronounce your verdict.

Gentlemen, you will recollect the occasion which the counsel took, not to speak to the defence of the traverser, but to arraign the wisdom of those laws which the situation of the country rendered unfortunately necessary; and to talk of emancipation and reform, as if the defence of the unfortunate misguided

and deserted traverser, was connected with such topics. How far his defence is connected with those topics upon which his counsel has been so eloquent and loud, I leave you to determine. Is there a word in the libel looking towards emancipation or reform? the blood of the Plantagenets; or what was offered to be proved at the bar of the House of Lords in Ireland, or the House of Lords in Great Britain? and yet upon these topics, how many long hours have been consumed in a court of criminal jurisdiction.

Gentlemen, the libel proceeds to state that—"It was no compliment to the native clemency of a Camden that the present lord lieutenant was sent into Ireland." Here, I say, I am astonished, that the name of Camden did not restrain the malignant pen—that a grateful recollection of the name of Camden, the first assertor of those principles upon which the liberty of the press at this day stands, did not arrest the arm of calumny. Character is like the spear of Ithuriel. Falsehood cannot bear its touch, and however disguised returns to its own likeness. Did it not occur to the libeller, that the noble lord did by his private life give the strongest refutation of the calumny—a life distinguished by an unaffected practice of all those domestic virtues and endearing charities which so eminently distinguish the royal character, whose representative he is. Believe me, gentlemen, private virtue gives the best assurance of the faithful and conscientious discharge of public trust.

"Massacre and rape, military murder, desolation and terror." Here are words calculated to disturb the peace and tranquillity of the kingdom, and prepare the people, as the libel prophesies, and intends, to look for another government. But the learned counsel has told you, that this libel is not at all conversant of the trial of Mr. Orr, and that it relates only to the subsequent department of justice. Your attention has been heretofore pointed to this part of the libel: *whose duty was it to state to the jury that the evidence was doubtful?* the duty of the judge. *Whose duty was it to state to the executive, that he doubted?* the duty of the judge. The libel has not in the rage of its calumny even ventured to assert, that the learned judge entertained a doubt, though it basely insinuates that the judge did recommend, and that the chief governor, deaf to the calls of justice, permitted an innocent man to be murdered by the forms of law. The libel proceeds, and admitting the truth of the evidence, questions the justice of the sentence, and the learned counsel endeavours, by the splendor of his diction, to palliate the enormity of a crime which, under the hypocritical cant of union and affection, has usurped a dominion over credulous and superstitious ignorance, and has made the sacred obligation of an oath the bond and pledge of a wicked and alarming union, which threatens the very existence of the nation; the subversion of all order, and a deprivation of all the blessings of civilized society.

Gentlemen, I fear that I have intruded too long upon your time, yet it is necessary to trespass on your attention a little longer. The learned counsel who opened the case for the traverser has informed you, that it is the duty of the jury to acquit, if there be any doubt upon their minds, and that it is the duty of the judge, if he is dissatisfied with the verdict, to recommend to mercy; I subscribe implicitly to that doctrine, and whenever I had the honour to act in a judicial capacity, I never did in a capital case omit to call upon the jury, in the most emphatical terms, if they had any rational doubt operating upon their minds, to acquit. When I have disagreed with the jury, or upon mature reflexion, found a circumstance in favour of a convict, I have never omitted to recommend to mercy, and have always found the humanity of the government anxiously concurrent with my recommendation. How wicked then is the libel, which makes the situation of a judge unendurable by any man of humanity and honour.

"Let, however," states the libel, "the awful execution of Mr. Orr be a lesson to all unthinking juries; and let them cease to flatter themselves, that the soberest recommendation of theirs and of the *presiding judge* can stop the course of carnage." If there be one part of the libel more wicked than another, it is this: It insinuates, that the judge who presided had recommended the convict to royal mercy, and that such recommendation was slighted. I ask, and I address a judge of high and honourable character, would he sit a moment upon a bench of which he is so great an ornament, if his recommendation were overlooked, and he were made the instrument of murder? The libeller knew, that upon the premises which he assumed, it was the duty of the judge to recommend—and to give colour to this calumny, he insinuates that he did, and that his recommendation was disregarded; and here, gentlemen, I call your attention to the facts resulting from the evidence of the learned judge. He was asked, if the recommendation of the jury had not been forwarded to the lord lieutenant; he freely told you it was. But it is fitting you should know, that judges most distinguished for their humanity have ever considered the recommendation of a jury (having upon their oaths returned their verdict guilty after a solemn call to acquit, if they entertained a doubt) as a mere extrajudicial effusion of amiable weakness. It is nothing more than telling the judge—*We have done our duty on our oaths; do, my lord, forget that you are upon your oath, and recommend him as an object of mercy, of whose guilt we entertain no doubt.* But was the noble lord interrogated, whether he had recommended to mercy; though the point of the libel, as against the lord lieutenant, is, that in slight of such recommendation, mercy, was denied? and here let me acknowledge the candour of the learned counsel, who has

spoken to the evidence for the traverser: he has abandoned that false suggestion of the libel, and in all that he has said, has not even insinuated that the noble judge did ever recommend.

But I much lament that the learned counsel recurred to some *Nisi Prius* address, which could only tend to mislead the ignorant. The law in cases of libel wisely forbids any enquiry into the truth or falsehood of the libellous matter, and the consequences of this principle the learned counsel endeavours to represent as an admission on the part of the prosecution of the truth of the libel: was the enquiry stopped or resisted on the part of the prosecution? did not you, my lord, call upon the counsel of the traverser to state the object of their intended examination? and upon their avowal of it—did you not, acting on your oath, and warranted by the unanimous opinion of the twelve judges of England, stop the enquiry?

Gentlemen, much has been said, which, though unconnected with the real object for your consideration, might call for observation, if the lateness of the hour permitted; but there are one or two points in the address of the learned counsel which I cannot pass over; would to God, for the honour of this our country, that it was not already too well known, that the private murder and assassination of such as should give evidence on the part of the crown, that is, of the public peace, was one savage feature of that system of terror which was to be established; how many who have given information have been assassinated? The humanity of the legislature in the hope of stopping the progress of a crime of such national disgrace, by removing the motive, provided that the informations of such as should be murdered, or violently put to death, should be received in evidence against the parties thereby charged; but their expectations were disappointed, and day after day you have been sickened with trials for murder, or conspiracies to murder persons who had given informations on the part of the crown. What a trial had you yesterday, when three plans for the murder of a man, who had given informations, appeared to have been the subject of cool discussion! Under these circumstances, it requires an extraordinary degree of fortitude to come forward to give evidence; and if men, from a sense of returning duty and repenting virtue, come forward to disclose and to prevent the completion of those crimes of which they either participated or were informed, are they therefore to be left at the mercy of the poignard of the assassin? Their evidence must ever be a subject for the pointed observation of the Court, and the serious consideration of the jury. How many witnesses have told you during this session, to which your attention has been called, that to avoid assassination, they are obliged to change their lodgings nightly? To the evidence of such men as I

conceive the learned counsel would distinguish as informers, you owe the detection of the high treason of Jackson, planning and preparing for the invasion of this country; and you have heard that the plot, ripe for the murder of the witness on the night preceding the trial, was defeated by accident.* Of Weldon, and the others who attempted to seduce the army, and of many others, to avoid prejudgment, I will not make mention; yet to give colour to the libel, the protection of such men, in the only place where it is probable their lives would be safe from the assassin's attack, is brought in charge against the government of the country. Every man in society owes an honest informer protection; the perjured informer, as he merits, has the execration of all mankind; nor will the all-seeing God, to whom the learned counsel has made so solemn an appeal, fail to enlighten and direct a cautious and humane judge, and a discerning jury to his detection.

There is but one other point to which I shall call your attention; the learned counsel has applied all his powers in the vain endeavour to represent a conduct, the genuine result of humanity and feeling, as cruel and wicked, trifling with the hopes and fears of the unfortunate sufferer and his family. Lord Yelverton has told you that the chief governor, quick and alive to the call of mercy, granted three respites to the unfortunate sufferer; not for the purpose of agonizing him with hopes and fears, and dashing with bitterness that cup which was not to pass from him; no, the chief governor listened to the voice of humanity; he wished—and who would not wish—to find a justifiable way to mercy—*In rege pater erat*—thrice was the sword of justice uplifted, thrice did his humanity, in hope of the appearance of some circumstance to justify his interposition, arrest it:

“Thrice justice urged—and thrice the slackening sinews

“Forgot their office, and confess'd the man.”

But justice at length prevailed, in stern despatch of nature.

I concur with the learned gentlemen in the panegyrics which they had pronounced upon the liberty of the press, which consists in laying no restraint upon publications, and not in freedom from censure when criminal matter is published; every man has a right to lay what sentiments he pleases before the public; to forbid that, would be to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity; the will of individuals is free, the abuse of that free will is the object of legal punishment; I agree with the learned counsel, that a free press is essential to the nature of a free state, but by a temperate, legal, and discreet

* See the trial of Leary, p. 315, and of Glennan and others, p. 437 of this volume.

use of it only can it be preserved. *It is the constitutional sentinel of the people; but by its licentiousness, it may become the most dangerous traitor.* Let the freedom of the press, and the purity of the trial by jury continue for ever; but sacrifice not, I beseech you, the sanctity of the one, to the licentiousness of the other. I have only to call upon you to consider the sacred duty you have undertaken to consider the publication, and if you can prevail upon yourselves to believe, that it was not published with the motives imputed to it by the indictment, in God's name acquit the traverser; but if you believe that it was, I call upon you, as men of conscience and of fortitude, regardless of insinuations, and superior to terror, whatever the consequence may be, to find him guilty.

I have endeavoured to discharge my duty, I am confident you will discharge yours.

SUMMING UP.

Mr. Justice Doanes.—Gentlemen of the Jury; I have to address you after a very long trial—after much time has been mispent in attracting your attention to points no way material to the cause. You have been amused by the display of eloquence, but running wide of the matter before you. I shall endeavour to point out to you what are the objects of your consideration, divested of all that irrelevant matter which has been addressed to you.

Gentlemen, the prisoner at the bar is indicted for publishing a libel;—first then, you are to consider, whether he is the publisher of the matter called a libel; and the intent with which it was published; and you are to consider also, whether the innuendos, which are stated upon the record are well and properly applied; that is nothing more, than where in the record it is stated, that by any expression the libel means such a thing, or allusions are made to the trial of Orr, or particular persons; you are to consider whether the matter bears that construction which is imputed to it or not. Secondly, if you be of opinion, that the prisoner published the paper, and that the innuendos are properly applied, you are to consider whether the paper be a libel; and if you are of opinion that it is, and that it was published with a malicious intent, I am persuaded that you know your duty too well, not to find him guilty.—But I agree with the counsel on both sides, that if you have any rational doubt of the publication, you should acquit him.

As to the first, whether the prisoner be the publisher of the paper which is charged to be a libel, in my apprehension, there is strong evidence for your consideration. But it is for you to determine, whether it carries to your minds the force of conviction, that he was the publisher of it. You find a witness produced, who bought this paper at the office, No. 4, Church-lane; the paper so published is identified by the witness, and is

traced from the time of the purchase to its production in court; it was handed as the witness tells you, only to one person, the father of the witness, and the father swears it was not out of his sight except when it was locked up by him, until he returned it to the son. Both of them were examined, and the son swears that the paper returned to him is the paper he bought, and is the paper now produced. Therefore, if you believe that testimony, there is no doubt as to the paper being published at that house. See then how major Sirr connects it with the prisoner. He arrested the prisoner at the Press Office, No. 4, Church-lane, and asked him was his name Peter Finerty; he said it was; he asked him, was he publisher of the paper called the Press? he said he was; upon that evidence of having admitted himself to be the publisher of that paper a few days after the time when the paper produced was bought at that very place—whether that leaves any rational doubt, that he was the publisher of the paper produced, you are to determine. I am not to give you any positive opinion as to that; it is not my province to interfere with that; I state the evidence, which I think is evidence to go to you, and it is for you to determine upon your oaths, that question, whether he published this paper? or whether you have any rational doubt upon it?—If you are satisfied that he did publish it, then see whether it be a libel, and whether the innuendos are properly applied?

Gentlemen, a late act of parliament, as has been truly said, has reposed in you the final decision of that question. The same act of parliament provides, however, that the judge who tries the cause in cases of libel, shall give his opinion to the jury. Therefore it is incumbent upon me to state my opinion upon this paper; it is for you, either to follow or to reject it, as you find in your own consciences you ought. But in the execution of that duty which the law imposes upon me, I am bound to say this—that a paper which grossly reflects upon the justice of the country, as this paper appears to me to do, is a libel. If this paper does endeavour to degrade the administration of justice in the minds of the people, as to me it appears to do, if you shall be of opinion, that such is the tendency of it, such a paper is in my mind a libel. If this paper represents to the public the trial and conviction of a man in the ordinary course of justice, as a foul conspiracy against the life of an innocent man, to be effected by means of perjury in the witnesses, and drunkenness in the jury—if it represents (as to me it seems to do) those diabolical means as used to procure the conviction of that man—if it brands with the name of murder the execution of a convicted criminal—judge for yourselves, whether it is a libel or not, I can have no doubt that it is.—If this does, as in my mind it appears to do, charge a jury of the country with bringing

in a verdict in a capital case in a state of beastly drunkenness, it is a libel.—If this paper, as it appears to me to do, represents the conviction of a criminal in the ordinary course of justice, as the result of perjury in witnesses, procured by reward, and of drunkenness in the jury, I feel myself under that oath by which I act, bound to tell you, that is a libel. If this paper, as in my judgment it appears to do, represents the king's governor of this country as regardless of his duty—violating the sacred trust reposed in him by his majesty, in a most important point—if it represents him to be so obdurate to the impressions of justice or mercy, as to suffer a convict to be executed, knowing him to be innocent,—if it describes the lord lieutenant as disregarding the recommendations of the judges and juries who may try prisoners—if this paper holds out to the public that he would pay no manner of attention to such circumstances, but that he would knowingly suffer an innocent man to be executed, there can be no doubt, that it is a most flagitious libel.

Gentlemen, I have made these observations upon this paper. Whether they are just, or satisfy you, as they do me, that this paper is a libel, is for your good sense to determine.

Gentlemen, having stated shortly these matters, for in truth I am not disposed to take up much of your time, the case appearing to be simple and plain, notwithstanding the many hours it has taken up; one other observation I will make,—if it strikes you in the same way, I feel myself compelled to call this paper a libel. If this appears to you, as it does to me, that even supposing the evidence against Orr to have been true, then this paper insinuates and endeavours to cause it to be believed, that the offence was in itself no crime—that even supposing the evidence to have been true, he was executed for a meritorious act.—With what view could that be held out but to irritate the public mind—to cast unjust censure upon the law, the government, and the administration of justice?—That compels me to say it is a libel; and if these observations strike you as they do me, the indictment has introduced the libel truly upon the record, when it says, that the defendant “devising and intending the peace and public tranquillity of the kingdom to disturb, and to bring the trial of William Orr, and the verdict had in the due course of law into hatred, contempt, and scandal, and to persuade the subjects to believe, that the trial was unduly had—and that Orr undeservedly died—that the lord lieutenant ought to have extended pardon to him, and that in not extending it, he acted inhumanly, wickedly, and unjustly, and in a manner unworthy of the trust committed to him by the king in that behalf;”—did publish this libel.

Gentlemen, if the observations I have

made upon the paper, which will go up to you, and which you will consider as you would in your closets—if, I say, these observations are founded, this charge against the prisoner is fully proved.

Gentlemen, suffer me to say a word with respect to the intent charged against the printer, in publishing the paper. Where no evidence is given to show that the publication was innocent, as where a man intending to give a letter to another, pulls a libel out of his pocket by mistake, or in various other cases which may be imagined of a publication of a libel with perfect innocence:—in all such cases if it does not appear on the evidence for the crown, that the act of publication was innocent, it is incumbent upon the party accused, to show these circumstances from which the innocence of the act of publication is to be inferred; and where that is not done, where are you to look for the intent of the publication, but in the paper itself?—it is not incumbent upon the crown, and in many cases it would be impossible for the prosecutor, to show any peculiar malicious intent distinct from the natural inference to be drawn from the paper itself. He must rest upon the paper itself; and if the jury look upon it, and can find a malicious intent there, it is sufficient for their verdict. In my apprehension, this doctrine ought not to surprise an honest and a sensible jury; it has been always held in every court, whose proceedings I have had an opportunity of observing. It does no injustice; it is supposing no more, than that a man is conscious of his own acts,—he knows what he does, and that he intends to do what he actually does. If a man publish a work of wit and humour, in other respects innocent, it may be inferred from the work itself, that his intention was to amuse. If he publish a work of science, it may be inferred that his intention was to inform.—So if the publication does in fact calumniate and defame, may it not with equal justice be inferred from the libel, that he published it with an intent to calumniate and defame. No other intent is necessary to be shown by the crown, but that resulting from the paper itself; no circumstances being shown by the prisoner which can vary that intent.

Gentlemen, there is another part of this case to which I think it my duty to advert: You will recollect, that the counsel for the prisoner stated a mass of matter, going through the whole of the libel, and stating that he would produce evidence of it, reflecting upon that trial of Orr, who has been convicted below—facts which he asserted would go to prove the libel to be true, and resting the defence of his client upon that publication. Gentlemen, I did, as it was my duty, reject such evidence, because it has been immemorially the common law of these kingdoms, that such evidence is immaterial, and forms no manner of defence—and it is not

in the power of any lawyer to trace the time when the law was otherwise. It has been uniformly so considered, even down to the time when the bill was before the two Houses of Parliament in England from whence the act of parliament under which you now act was copied, and this rule of law is unchanged by that act of parliament. At that time various questions were put to all the judges of England by the Lords, for the purpose of assisting the legislature in framing that bill, and I have already read one of the questions put to them, it was this—"Is the truth or falsehood of the written or printed paper material, or to be left to the jury upon the trial of an indictment or information for a libel; and does it make any difference in this respect, whether the epithet *false*, be or be not used in the indictment or information?" The judges answered that question unanimously; and upon that answer I ground my opinion, knowing that it is founded upon the law of the land. The answer is in these words; "This question consists of two branches, our answer to the first branch of this question is, that the truth or falsehood of a written or printed paper is not material, or to be left to the jury on the trial of an indictment or information for a libel. We consider this doctrine as so firmly settled, and so essentially necessary to the maintenance of the king's peace, and the good order of society, that it cannot now be drawn into debate."

The judges have said, that they consider that doctrine essentially necessary to the maintenance of the king's peace, and the good order of society—And so it is—What is the reason of that rule of law?—The meaning and reason of it is, (for there is no rule of law, that is not founded in good sense and plain reason), that no man shall be accused of crimes, but by due course of law—that there shall be no temptation held out to a violation of the public peace, by calumniating persons in libels, instead of bringing those persons to answer in the ordinary course of justice—that a man shall not be cruelly punished, and without a trial, as in fact he is by a libel charging him with crimes. And the reason of the rule is strongly illustrated by this—that the libel would itself operate as an indictment, if the publisher of it were prosecuted; and if the libel charged a crime, suppose murder, the inquiry into the truth of it would be had before a court and jury, who could not punish it if the charge were found to be true—and if any man thought fit to libel the verdict of a jury, or the decisions of a court of justice, is that verdict, or are those decisions to be tried here collaterally upon an indictment for the libel?—Is the conduct of the judge to be brought into discussion here, or is such a libeller to be left unpunished?—The court which sits to try the libeller is not competent to try alleged misconduct in the government. There are proper courts for that purpose. Parliament may enquire into

such a case. But no jury or court inferior to parliament can inquire into it, at least in this form. If there be any ground for accusation, the party ought to proceed in the due course of law. But he is not to calumniate the administration of justice—the conduct of juries, or judges, or the conduct of the king's governor, and to expect to put that jury, the judges, or chief governor upon the defence here, to prove the falsehood of the charge.

Therefore neither the truth nor falsehood of the libellous matter is allowed here to be enquired into. But you are to determine for yourselves, upon the ground I have already stated, whether or no this paper does maliciously calumniate the proceedings had upon that trial, and afterwards; and if you believe it does, and that malice led to the publication of it, then you will of course find the defendant guilty: but if you consider it a fair, candid discussion of public affairs, not with the intent I have mentioned, in that case you will acquit the prisoner. If you have any rational doubt, to be sure, you will acquit him. But if you are of opinion, that it is a libel of that import which I have stated, you ought to convict him.

Gentlemen, much has been said, and great exertions were made, by counsel, to show that the facts alleged in that libel were well founded: I have already stated, why I rejected the evidence offered. But it is said; this is called in the indictment a *false* libel, and therefore that it is matter of evidence whether it be true or false. Gentlemen, that is not the meaning of the term in the indictment.—I have the same authority for saying, that is not the meaning of the term; nor will it, though called *false*, make the truth or the falsehood matter of enquiry. "The epithet *false*," say the judges of England, in the answer I have alluded to, "is not applied to the propositions contained in the paper, but to the aggregate criminal result—Libel. We say *falsus libellus*, a false libel, as we say, *falsus proditor*, a false traitor, in high treason." This is the highest authority in the law upon this subject—and the same authority tells us, that whether the epithet *false* be, or be not used in the indictment, can make no difference in respect of the materiality of the truth or falsehood, or its being left to the jury upon the trial.

Gentlemen, you will consider this case, and I am satisfied your verdict will be conformable to your duty.

The jury retired for a short time, and brought in a verdict, Guilty.

Saturday, December 23rd.

This day, Mr. Finerty was put to the bar, and before sentence pronounced, begged permission to say a few words to the Court,

which being granted, he proceeded as follows:*

My lord; From the very able defence which has been made for me, I should think it utterly unnecessary to trouble your lordship with any observations of mine, if the language of Mr. Prime Serjeant, in his address to the jury, had not imperiously demanded some reply.

It may accord well with the general system of our government, to inflict a severe punishment upon me, but what end it can answer to defame and abuse my character, I am at a loss to discover. Among the epithets which the learned counsel so liberally dealt out against me, he was pleased to call me "the tool of a party." However humble I may be, my lord, I should spurn the idea of becoming the instrument of any party, or any man; I was influenced solely by my own sense of the situation of the country, and have uniformly acted from that feeling of patriotism which I hope it is not yet considered criminal to indulge; and I trust the general conduct of *THE PRESS* has fully evinced to the people, that its object was truth, and the good of the nation, unconnected with the views, or unwarped by the prejudices of any party.

If I would stoop, my lord, to become the tool of a party, I might have easily released myself from prosecution, and enjoyed protection and reward; and this would have been clearly illustrated, if your lordship had suffered the persons summoned on my trial to be examined.

I have been now, my lord, eight weeks in close confinement, during which I have experienced the severest rigours of a goal—the offence was bailable, but it became impossible for me, from the humility of my connections, to procure bail to the amount demanded; probably had any person stood forward, he would have been marked; and sensible of that, I preferred imprisonment to the exposure of a friend to danger; but not contented with my imprisonment and persecution, it seemed the intention of some of the agents of government to render me infamous. For this purpose, my lord, about three weeks since I was taken from Newgate, which ought at least to have been a place of security to me, at seven o'clock in the evening, by what authority of law I know not, to alderman Alexander's office; and it was there proposed to me to surrender the different gentlemen who had favoured *THE PRESS* with their productions, particularly the author of *Marcus*. Every artifice of hope and fear was held out to me. After a variety of interrogations, and after detaining me there until two o'clock in the morning, I was despatched to Kilmainham under an escort, where being refused admittance, I was returned to New-

gate—from whence, about eleven o'clock on the same day, I was again taken to alderman Alexander's, where I underwent a similar scrutiny, until three o'clock, when the alderman left me, as he said, to go to secretary Cooke, to know from him how he would wish to dispose of me, or if he desired to ask me any questions. At eight in the evening, the alderman, for whom I was obliged to wait, was pleased to write to one of his officers to have me remanded to prison. In the course of this extraordinary inquisition, my lord, I was threatened with a species of punishment, to a man educated as I have been in principles of virtue, and honesty, and manly pride, more terrible than death—a punishment, my lord, which I am too proud to name, and which, were it now to make part of my sentence, I fear, although I hope I am no coward, I should not be able to persuade myself to live to meet. By what authority any man could presume to prejudge your lordship's sentence, or anticipate the verdict of a jury, it is not for me to decide. I cannot conceive what sort of solicitude these men entertain for the dignity of the Irish character, or the honor of the government, who thus endeavour to stain it by the multiplication of informers. It may be answered, my lord, that informers are useful—so is the office of common hangman; but will any man of common honesty, or common sense, imitate the conduct, or plead for the character of either, particularly in a time when so many instances of profligacy have appeared amongst that class?

With respect to the publication, my lord, which the jury has pronounced a libel, the language of which is undoubtedly in some instances exceptionable, it was received in the letter-box by my clerk, who generally went to the office earlier than I, and taking it to the printing office, it was inserted, and the whole impression of the paper worked off before I saw it; but on remonstrating with the author, he produced to me such documents as put the truth of the statement beyond question, and these documents, my lord, were yesterday in court, and would, combined with the testimony of the witnesses present, if your lordship had permitted their examination, have amply satisfied the jury of the facts; and heretofore, my lord, I have been taught to think that truth was above all things important, and I never did believe it possible that truth and falsehood were in any instance equally guilty, or that the truth, though it might not altogether acquit, would not so much as extenuate, for if it would in any degree extenuate the offence, I suppose your lordship would have thought it necessary that it should be heard, and of consequence conceived the publication of *Marcus's* letter not alone innocent but praiseworthy, even though it did contain passages which I do not vindicate; but your lordship's opinion, and the verdict of the jury, teaches a different

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* This account of Mr. Finerty's Address to the Court is taken from "*The Press*," No. 39.
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lesson, and may serve to regulate my conduct in future.

I hope your lordship will take the several circumstances I have stated into consideration—if guilt, my lord, consists in the mind, I solemnly assure you, that I have examined my heart, and find that it perfectly absolves me from any criminality of intention; I have only then to inform your lordship that a heavy fine would be tantamount to perpetual imprisonment, and long imprisonment little short of death; yet whatever punishment you may please to inflict, I trust I have sufficient fortitude arising from my sense of religion, and of the sacred cause for which I suffer, to enable me to bear it with resignation.

Mr. Justice *Downes*.—Peter Finerty, you have been found guilty by a jury of your country of publishing a most seditious libel. The indictment, upon which you were tried, charged you with publishing that libel, devising and intending to molest and disturb the peace and public tranquillity of the kingdom, and to bring a trial, a verdict, and the execution of a criminal, who had been tried and executed in the due course of law, into contempt, hatred, and scandal, among the king's subjects. It charges you with devising to cause the king's subjects to believe, that the trial of William Orr, convicted at Carrickfergus, was unduly had, and that the criminal undeservedly died, and that the lord lieutenant ought to have extended the king's mercy to him, and did not, and that in not extending such mercy, he acted unjustly, wickedly, inhumanly, and unworthy of the trust committed to him.—With those intentions, the grand jury charged that libel to have been published, and with those intentions a petit jury of your country have found that you did publish it.

At the bar, you now speak of innocence of intention, and how?—You have published a libel upon the administration of justice, and you say that you have done it innocently—on your trial there was no evidence given of any circumstance in the act of publication that could have made it innocent. You state from the bar, that it was put into your letter-box—that it was carried by a clerk to the printing-office, and worked off without your knowing it. If those circumstances could palliate your offence, you gave no evidence of them; and if you had, I fear they could have availed but little. A printer is not to scatter poisons among the people—he is not to scatter arrows and death around him, and justify himself by saying, that he did not attend to business himself, but left it to his clerks: it is no manner of justification, nor is there any evidence to show that it so happened.

You speak of your intentions, and of your attachment to the constitution. How are the intentions of any man to be discovered but by his acts?—A jury has found you guilty of endeavouring to degrade the administration of public justice—to disgrace the trial by jury

—to vilify the judges, and to traduce the government of the country;—they have found you guilty of endeavouring by this libel to make the public believe, that the administration of justice is nothing but oppression to them—that no mercy can be had from those in whom the power of mercy is placed.—When your libel does all this, who shall believe that your intentions were not correspondent to your acts, and that when you did vilify and calumniate the administration of justice and the government of the country, who shall believe that you did not intend to vilify and calumniate them?

You state, that your intentions were pure—that documents were laid before you to prove the truth of the facts—

Prisoner.—Subsequent to the publication, my lord.

Mr. Justice *Downes*.—Is a printer to try the administration of the country upon what he chooses to consider as documents? Is he to excite the indignation of the people against their governors upon what you deem to be sufficient documents? Are you to make charges against the king's lieutenant—to accuse him of criminality in his office, and to shake the peace and happiness of the country to its foundation, and then to justify yourself by alleging that your intentions were innocent, and that you supposed the documents in your possession were sufficient,—sufficient for what? to justify you in vilifying the administration of justice in all its branches, and in every stage of its proceeding. It is impossible that the man uttering such an excuse can feel that he can persuade any man living to believe it.

You have said, that offers of pardon were made to you—or of favour, on giving up the author of this libel, and you have expressed an high degree of scorn at being desired to aid the public in discovering the original criminal. You have, with a show of false spirit, affected to consider and to hold out to this audience, those men who assist in detecting crimes, as criminal themselves—a false sentiment which I trust no man can adopt.

What offers were made you, I know not; none appeared to the Court. If any were made, they were probably the dictates of a merciful disposition; and yet your libel states that mercy has no existence in the government of this country. I do not find any circumstance stated by you at the bar in mitigation of your punishment that can warrant me in letting it affect the judgment of the Court, other than one fact, that you have been in prison for eight weeks. That fact, so far as it goes, will be taken into consideration, and the imprisonment I shall order, will be directed to be computed from the time when you were first arrested. So far as that goes, and that appears the only circumstance that can in any degree tend to any sort of mitigation, you shall have the benefit of it. You have been found guilty by a jury of the fact,

which you now admit at the bar, of publishing a libel, which attacks the very existence of society, by endeavouring to draw into contempt the administration of justice. It is obvious to every man, that if you, or the writer of this libel should be able to persuade the people, that justice is not duly administered to them, there can be no happiness, no peace in the country; you have vilified the trial by jury—that mode of trial, for which our ancestors and ourselves have been at all times the admiration of the world. You have represented the execution of a criminal in the due and ordinary course of justice, as an horrid murder, perpetrated by corrupt perjury in the witnesses, and drunkenness in the jury!—Can any man doubt of the wicked tendency of such an accusation, or of the intentions of those by whom it is made? You have by this libel farther represented, that a man, whose conviction you state to have been so obtained, has been suffered by the lord lieutenant to be executed, he actually knowing his innocence!—Is it possible to state a charge of a more atrocious nature?—Is it possible to conceive that any man, much less a man in his high station, would be so deaf to the calls of justice, so steeled against every honest and honourable feeling, as knowingly to suffer an innocent man to be put to death by form of law?—It is an atrocity beyond all imagination!—It is impossible to believe it—No man, not even the writer of that libel, does, or can believe it. Your libel equally attacks the conduct and character of the judge who tried the criminal; for it represents to the public, that this man has been executed upon a verdict obtained by drunkenness, reward, and perjury. Can it be supposed, or is there any man acquainted with the proceedings in criminal courts who can believe, that if the verdict were so obtained, the judge would not have recommended the prisoner to mercy? And if the judge had recommended to mercy, has it ever been heard by any man living, that mercy was ever refused to such a recommendation?—Is there a man, who ever heard, that a judge who tried a prisoner, had recommended him to the lord lieutenant for pardon, and that pardon was refused?—never; no judge ever yet recommended a prisoner for mercy, where mercy was refused by the present or any other chief governor of this country. In the instance of Orr, ample time was given by three different respites to examine into his case. If the learned judge who tried the prisoner, had thought it consistent with his duty to recommend him, there is no man in his situation who would not have recommended—the learned judge would have felt peculiar delight in recommending to mercy, if he thought it consistent with his duty; and if he had recommended, there is no man can believe that his recommendation would have been refused. Mercy never is refused in any instance where it ought to be extended; and to extend it where it ought not, is cruelty to the public.

I have thus adverted to the general course which your libel has taken. If it has been successful enough to convince any one man, that such an atrocity as it alleges was committed, and that the administration of justice is in the state that your libel represents, that man is a worse subject than he was before; and if the body of the people can be persuaded to believe such a representation, it would tend to destroy the whole frame of our constitution, and the peace and happiness of society. But your libel, not content with reviling the administration of justice, has had the audacity to attack the law of the land, and to justify the crime for which Orr was convicted; and even putting it, as the libel does, upon the supposition that the verdict was true, and the proceedings in the due and ordinary course this libel affirms, that the crime of which Orr was convicted was no offence—that it was an act innocent, even meritorious—and what was that act?—The administering an unlawful oath of that description from whence every evil which this country now deplores has arisen—an oath purporting to bind men to be of a society formed for seditious purposes—an oath by which the person taking it, surrenders his liberty to the control of others, of whom he knows nothing—an oath to be of a society, appearing, in abundant instances in evidence upon judicial trials, to have been formed for the destruction of the government and of the country, and to aid the common enemy of the empire. From that oath have sprung innumerable robberies, the most atrocious cruelties, horrid conspiracies to murder—murder the most savage and barbarous, and treasons which threaten to shake the state—these have been the fruits of that oath which your libel justifies, and calls an oath of *Charity*, of *Union*, of *Humanity*, and of *Peace*!—There stand behind you, at this moment, many unhappy men, waiting the dreadful sentence of the law, which that oath has provoked against them, and who have by that oath surrendered their free will, and have given up the guidance of their actions to desperate men, and under their influence, committed crimes of which before they had no conception.

And yet this is the offence which this libel not only calls innocent, but even meritorious!—When a libel has all this horrid tendency which I feel this has, and which every thinking man must observe, must be convinced of, it does call upon the Court for a severe punishment, and it is my duty to pronounce that sentence, which the law does enforce, and which it does not become me to alleviate.

That sentence is, that you do stand in and upon the pillory for the space of one hour—that you be imprisoned for two years to be computed from the 31st day of October, 1797,* and until you pay a fine of 20*l.* to the king—

* The day upon which the prisoner was arrested.

and that you give security for your future good behaviour for seven years from the end of your imprisonment, yourself in 500*l.* and two sureties in 250*l.* each.

[The following articles were published in the fortieth number of "The Press" on Saturday, December 30, 1797.

TO THE IRISH NATION.

Countrymen; since the conviction and sentence passed on the printer of "The Press," a clause has been pointed out by the commissioners of stamps, which lay lurking in one of the late parliament's acts, unknown to the lawyers; whereby a printer convicted of a libel, shall be deprived of his property in the paper in which it had been inserted. By this law, in such perfect conformity with all other acts of parliament, which in the words of a great and a good man, "has taken more from the liberties, and added more to the burthens of the people"—and I may say stained the statute book with more penal laws "than any parliament that ever yet existed;" it has become necessary that on the spur of the instant, from this unforeseen clause, another proprietor should come forward to save the Irish Press from being put down. To perform that sacred office to this best benefactor of mankind, has devolved upon me; and rest assured I will discharge it with fidelity to you and our country, until some one more versed in the business can be procured.—Every engine of force and corruption has been employed by these ministers, into whose hands unfortunately for the present peace, and the future repose of the nation, unlimited power has been invested, to discover whether I was the proprietor of "The Press." Had they sent to me, instead of lavishing your money amongst perjurers, spies, and informers, I would have told them, what now I tell you; I did set up "The Press," though in a legal sense I was not the proprietor; nor did I look to any remuneration; and I did so, because from the time that, in violation of property, in subversion of even the appearance of respect for the laws, and to destroy not only the freedom of the press, but "The Press" itself, the present ministers demolished the Northern Star; no paper in Ireland, either from being bought up, or from the dread and horror of being destroyed, would publish an account of the enormities which these very ministers had been committing; where they not only suffered a lawless banditti of sworn extirpators to destroy the property, to raze the habitations, and to drive thousands of ruined families to the most distant parts of the country, for want of protection, and where the strongest suspicions rested, that they had given encouragement to such diabolical acts, under the name of loyalty, and the mask of religion; where they let loose an excited soldiery, to commit acts of outrage which no invading army of any country in Europe, would have prac-

tised, without violating those laws established amongst civilized nations, where the torch had consumed their houses and property in entire districts, and summary murders had been wantonly perpetrated; where thousands have been hurried into those multiplied dungeons, and thousands sent to the gallows, on "suspicion of being suspected," of Rebellion and Union; and above all, where TORTURE has been applied in numerous instances to extort confession, of what by the Insurrection act has been judged worthy of death; but as I read it, by the strictest rules and injunctions of Christian morality has been enforced as a paramount duty. "THAT TORTURE" which our ancestors held in such inveterate abhorrence, that its utter exclusion was esteemed so fundamental a part of our constitutional code, that neither that Stuart, nor his ministers whose heads paid the forfeit of the crimes they committed, nor the ministers of that Stuart who was expelled, durst introduce it. I could cite myriads of facts to substantiate the suppression of the publication of these enormous atrocities; but I will confine myself to the mention of one, which has come within my own knowledge. Whilst I was confined in the Tower, the soldiers who were stationed all around it, fired up at the prison, and on being asked why they had fired, without having challenged, or any pretext for so doing, they answered, "that they had acted according to the orders they got." As I was the only person confined in the prison, no doubt could remain that these orders were issued for the purpose of assassination. A gentleman who had been an eye-witness of the attempt, took a statement of facts to the Evening Post, which was at that time esteemed the least corrupted paper in Dublin; but the editor told him, that fearing that his house and his press might experience the fate of the Northern Star,* he would not insert it; although the next day not only that print, but every other paper in town, contained an account of the transaction; in which there was not one word of truth except the admission that the shots had been fired! From the moment I was enlarged from the Tower, I determined to free "The Press" from this dastardly thralldom, that the conduct of those ministers might be faithfully published; and whilst a beloved brother is confined in a cell nine feet square, against every form of law, and the plighted faith of this administration, I take this opportunity to call on lord Camden to tell you and the world, what inquiry has been made, or what punishment has been inflicted on the perpetrators of an act, which if brought home to his administration, must

* This paper, "instituted at Belfast in the summer of 1797, was not suppressed otherwise than simply by an act of military execution; a party of soldiers taking possession of the printing-office, and destroying the types." *Gordon's Hist. Irish Rebellion*, 37.

affix a greater stain on his name, than the ever memorable days of September have indelibly left on Robespierre and his gang of assassins; whose government was supported by burning of houses, destruction of property, massacring the people, and crowding the galleys and dungeons, but for which he, EVEN ROBESPIERRE, disdained to employ torture to extort confessions of patriotism, which this sanguinary usurper punished as treason. Whenever it shall happen that one or a few base usurpers, shall have seized on a nation's civil and political rights; and that they shall have sold them to a neighbouring country, in the rankest and foulest corruption and treason; whenever it shall happen that to heal religious dissension, to promote universal philanthropy, true christian charity, and national union; and to establish the imprescriptible right of being represented, which no people can forfeit, shall be punished by lawless or legalised murder; trust me, the most drowsy conscience, stung by public exposure, will make every effort by bribery, by violence, by persecution, and even by bludgeon and robbery, to put down "The Press." But regarding it as the great luminary which has dispelled the darkness in which mankind lay brutalized, in ignorance, superstition, and slavery,—regarding it as that bright constellation which, by its diffusion of light, is at this moment restoring the nations amongst whom it has made its appearance to knowledge and freedom; whilst I can find one single plank of the scattered rights of my country to stand on, I will fix my eyes on "The Press," as the polar star which is to direct us to the haven of freedom. With these sentiments engraved on my heart; alive to the honest ambition of serving my country; regardless whether I am doomed to fall by the lingering torture of a solitary dungeon, or the blow of the assassin; if the freedom of the Press is to be destroyed, I shall esteem it a proud destiny to be buried under its ruins. But if there be any men so base or so stupid as to imagine that they can usurp or withhold your civil and political rights; that they can convert truth into sedition, or patriotism into treason; if they imagine that this is a period favourable for abridging the freedom of mankind, or establishing despotic power on the ruins of liberty, let them look round them, and they will find, that amongst the old and inveterate despotisms in Europe, some have been destroyed, and that the rest are on the brink of destruction. They may make martyrs, and liberty's roots will be fertilized by the blood of the murdered; but if their deeds and their blunders have not made reflexion a horror, let them look back on the five years that are passed, and they will see that they have been the most destructively rapid revolutionists that ever existed; they will see that Great Britain and Ireland, from the portion of rights they enjoyed, which were the nations of Europe where revolution was least necessary, and where it might have

been most easily saved, are now nearest the danger. But let them reflect ere it is too late, and it is never too late to abandon a ruinous course, that if they could establish without opposition *lettres de cachette* in place of Habeas Corpus, and trial by jury; if the galleys and bastiles of despotism could be erected in place of the prisons of law; if they could abolish every idea of representation, and establish chambers for registering their requisitions and edicts; if instead of the Press of the Nation they could set up the Gazette of the Court; if they could abolish that great constitutional principle, that no man could be forced to his own crimination, and establish the torture to extort confession; they should recollect that, like France, instead of preventing a revolution, they would but create so many powerful causes to excite the people to make one; and whilst tyrannic despots talk so much of supporting the constitution they have done so much to destroy, let them remember that if it owes much to obedience, it owes more to resistance; and that the feelings of a people must determine where crimes and sufferings shall end the one and begin the other.

ARTHUR O'CONNOR.*

This day Mr. Peter Finerty, pursuant to his sentence, stood one hour in the pillory, opposite to the Sessions-house in Green-street. An immense concourse of people attended this exhibition. Mr. Finerty was accompanied by some most respectable citizens; he appeared contented and resigned, and upon being released from the restraint of this governmental engine for securing the liberty of the Press, he addressed the spectators in a few words: "My friends, you see how cheerfully I can suffer—I can suffer any thing, provided it promotes the liberty of my country." Upon this the spectators applauded by clapping of hands, the most marked silence having prevailed until then. Some of the guard who attended, being, we suppose, the picked men of the Armagh militia, attacked the unarmed people. Some of the officers also were guilty of similar conduct; others both officers and privates acted like gentlemen and soldiers. Sheriff Pasley on this occasion conducted himself with perfect propriety. The conduct of the people was peaceable and exemplary.

Mr. Finerty has received the sentence of the Law for publishing what he offered in open court to prove was the Truth. He has by this sentence been deprived not only of liberty, but of bread. The friends of the Press and of Truth, are hereby informed that subscriptions will be received for his relief at the Press-office, and the names of his benefactors, if required, kept secret, lest virtue, public spirit, and benevolence should subject any to violence or persecution.]

* See his trial for high-treason, A. D. 1798, *infra*.

626. Proceedings on the Trial of PATRICK FINNEY for High Treason; tried at Dublin before the Right Honourable Tankerville Chamberlain, one of the Justices of the Court of King's Bench, and the Honourable Michael Smith, one of the Barons of the Court of Exchequer of the Kingdom of Ireland, on Tuesday January 16th: 38 GEORGE III. A. D. 1798.*

AT a Commission of Oyer and Terminer held in the city of Dublin, in the month of July, 1797, an indictment was found against the prisoner, Patrick Finney, for high treason, at which time counsel and an agent were assigned to him.

At the ensuing commission held in the month of October following, he was ordered to be brought into court in order to be arraigned, when the gaoler mentioned, that the prisoner was confined to his bed by illness.

The Court directed, that the physician who attended the gaol should examine the prisoner, and report the state of his health on the next day.

Doctor Scott accordingly appeared in court the next day, and was examined upon oath touching the prisoner's state of health. He stated that the prisoner had been attacked with a slight fever, which was then subsided, and his pulse was tolerably regular:—he apprehended that the prisoner's illness arose from something he had taken; and upon being asked, whether he thought the prisoner was in such a state of health, as to admit of his being brought into court, and remaining there during a long trial; the doctor answered that in his opinion he was not.

In consequence of this report, the prisoner was not brought into court, until the next adjournment of the commission, which was upon Monday the 11th of December, 1797, when he was arraigned upon the following indictment:

County of the City of Dublin to wit. } THE jurors for our lord the king upon their oath present that an open and public war on the 30th day of April in the 37th year of the reign of our lord George the third by the grace of God of Great Britain France and Ireland king defender of the faith and soforth and long before and ever since hitherto by land and by sea, was and yet is carried on and prosecuted by the persons exercising the powers of government in France against our most serene illustrious and excellent prince

* Reported by William Ridgeway, esq. Barrister at Law.

our said lord the now king And that Patrick Finney late of the parish of St. Andrew in the city of Dublin tobacco spinner a subject of our said lord the king of his kingdom of Ireland well knowing the premises but not having the fear of God in his heart nor weighing the duty of his allegiance but being moved and seduced by the instigation of the devil as a false traitor against our said lord the now king his supreme true lawful and undoubted lord the cordial love and true and due obedience which every true and dutiful subject of our said present sovereign lord the king towards him our said lord the king should bear wholly withdrawing and contriving and with all his strength intending the peace and common tranquillity of this kingdom of Ireland to disquiet molest and disturb and the government of our said sovereign lord the king from the royal state title honour power crown and imperial government of this his kingdom of Ireland to depose and deprive and our said lord the king to death and final destruction to bring.

And that the said Patrick Finney on the said 30th day of April in the said 37th year of the reign of our said lord the king and on divers other days and times as well before as after that day, at the parish of St. Andrew aforesaid in the city of Dublin aforesaid and in the county of the said city of Dublin with force and arms falsely wickedly and traitorously did compass imagine and intend the said lord the king then and there his supreme true and lawful lord of and from the royal state title honor power crown and imperial government of this his realm of Ireland to depose and wholly deprive and the said lord the king to kill and bring and put to death and that to fulfil and bring to effect his said most evil wicked treason and treasonable imaginations and compassings he the said Patrick Finney as such false traitor as aforesaid during the said war between our said lord the king and the said persons exercising the powers of government in France on the said 30th day of April in the 37th year of the reign of our said lord the king aforesaid at the parish of St. Andrew aforesaid in the city and county of the said city of Dublin aforesaid with force

and arms falsely maliciously and traitorously did join unite and associate himself to and with divers other false traitors to the jurors aforesaid as yet unknown; and did then and there with such false traitors to the jurors aforesaid unknown enter into and become one of a party and society formed and associated under the denomination of United Irishmen, with design and for the purpose of aiding and assisting the said persons so exercising the powers of government in France and so waging war as aforesaid against our said sovereign lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland and being so united and associated did then and there and at divers other days and times as well before as after that day with divers other false traitors to the jurors aforesaid unknown meet assemble confer consult and deliberate on the adhering to joining aiding and assisting the said persons so exercising the power of government in France as aforesaid and being enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland.

And that afterwards and during the said war on the 30th day of April in the 37th year of the reign of our said lord the king aforesaid at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in farther prosecution of his treason and traitorous purposes with force and arms falsely maliciously and traitorously did join unite and associate himself to and with divers other false traitors to the jurors aforesaid as yet unknown and did then and there with such false traitors to the jurors aforesaid unknown enter into and become one of a party and society formed and associated under the denomination of United Irishmen with design and for the purpose of aiding assisting and adhering to the said persons so exercising the power of government in France and so waging war against our said sovereign lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland.

And that afterwards and during the said war &c. on the 30th day of April in the 37th year of the reign aforesaid and on divers other days and times &c. at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid &c. with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet propose consult conspire confederate and agree that one or more person or persons should be sent into France to incite move and persuade the said persons exercising the powers of government in France and being enemies of our said lord the king to invade this kingdom of Ireland and to raise and make war therein against our said lord the king.

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And that afterwards and during the said war between our said lord the king and the said persons &c. to wit on the 30th day of April in the 37th year of the reign aforesaid at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in farther prosecution of his said treason and treasonable purposes with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet propose consult conspire confederate and agree that one or more person or persons should be sent into France to invite move and persuade the said persons exercising the powers of government in France and so being enemies of our said lord the king as aforesaid to invade this kingdom of Ireland and to raise and make war therein against our said lord the king and the said Patrick Finney then and there did ask demand raise levy and receive from the said other false traitors so then and there met together divers sums of money to wit from each and every of the said false traitors the sum of 20l. in order and for the purpose thereby and therewith to pay discharge and defray the costs charges and expences of the said person or persons so to be sent into France for the said purpose last mentioned in going and travelling by land and by water into France for the said purpose in manner last herein before mentioned.

And that afterwards, &c. on 30th day of April 37th year &c. at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in further prosecution of his said treason and treasonable purposes aforesaid with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet propose consult conspire confederate and agree to send and in pursuance of said conspiracy and agreement then and there did send into France four persons to the said jurors unknown to incite move and persuade the said persons exercising the powers of government in France and being enemies of our said lord the king to invade this kingdom of Ireland and to raise and make war therein against our said lord the king and to aid and assist the said persons exercising the powers of government in France and being enemies of our said lord the king in invading this kingdom of Ireland and in raising and making war therein against our said lord the king.

And that afterwards &c. to wit on the 30th day of April in the 37th year of the reign aforesaid at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in further prosecution of his said treason and treasonable purposes with force and arms falsely wickedly and traitorously did with divers other false traitors

whose names are to the said jurors as yet unknown propose consult confederate and agree to send and in pursuance of the said conspiracy and agreement then and there did send into France four persons to the said jurors unknown to incite move and persuade the said persons exercising the powers of government in France and being enemies of our said lord the king to invade this kingdom of Ireland and to raise and make war therein against our said lord the king and to aid and assist the said persons so exercising the powers of government in France and being enemies of our said lord the king in invading this kingdom of Ireland and raising and making war therein against our said lord the king and the said Patrick Finney then and there did ask demand raise levy and receive from the said other false traitors so then and there met together divers sums of money to wit from each and every of the said false traitors the sum of 20*l* in order and for the purpose therewith and thereby to pay discharge and defray the costs charges and expenses of the said four persons to the jurors unknown in going and travelling by land and by water into France for the said purposes last mentioned in manner last herein-before mentioned.

And afterwards &c to wit on the 7th day of May in the 37th year of the reign of our said lord the king &c at the parish of St Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in further persecution of his treason and treasonable purposes with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet propose conspire consult and confederate to raise levy and make insurrection rebellion and war within this kingdom of Ireland.

And that afterwards and during the said war &c to wit on the 7th day of May in the 37th year of our said lord the king at the parish of St Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in further prosecution of his said treason and treasonable purposes with force and arms falsely wickedly and traitorously did join and associate himself to and with divers other false traitors whose names are to the jurors unknown and did then and there with such false traitors to the jurors aforesaid unknown enter in to and become one of a party and society formed and associated under the denomination of United Irishmen with design and for the end and purpose of aiding assisting and adhering to the persons exercising the powers of government in France and so waging war as aforesaid against our said lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland and the said Patrick Finney and the said other false traitors to the jurors unknown who were then and there present together

and so associated and united and there amounting in the whole to the number of forty-eight persons did then and there divide themselves into four splits each of which said splits contained twelve of the said false traitors and each of the said splits did then and there choose one of the said members thereof to be the secretary of such split and to meet consult and confederate on behalf of such split with divers other false traitors to the said jurors unknown at a meeting of the said false traitors last mentioned to be held at the parish of St Andrew in the city and county of the city of Dublin under the denomination of a Baronial Meeting for the aforesaid purpose of aiding assisting and adhering to the said persons exercising the powers of government in France and so waging war as aforesaid against our said lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland and after that the said secretaries were so chosen the said Patrick Finney with the other false traitors who were then and there present as aforesaid did then and there consult confederate and conspire to make and cause to be made a forcible and violent attack on his majesty's ordnance stores in his majesty's castle of Dublin in the city and county of the city of Dublin in which said stores his majesty's arms and ammunition for the use of his majesty's troops in this kingdom then were and usually are kept in order thereby forcibly and violently to deprive his majesty of the said stores and of the arms and ammunition therein contained and the said Patrick Finney in order to promote assist and facilitate the success of the said attack did then and there advise direct and command the said false traitors then and there present that they and each and every of them should view White's-court in Great Ship-street No. 48 in Great George's-street and the stone-cutter's yard in said street last mentioned and should give their opinion to their respective splits (meaning the splits aforesaid) whether said places were proper places to make an attack on the said ordnance stores so as their secretaries (meaning the secretaries aforesaid) might be enabled to report their opinion to the Baronial Meetings (meaning the meeting so to be held as aforesaid under the denomination of a Baronial Meeting.)

And that afterwards and during the said war between our said lord the king and the said persons exercising the powers of government in France to wit on the 7th day of May in the 37th year of our said lord the king at the parish of St. Andrew aforesaid in the city and county of the said city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in further prosecution of said treason and treasonable purposes with force and arms falsely wickedly and traitorously did join unite and associate himself to and with divers other false traitors whose names are to the said jurors unknown and did then

and there with such false traitors to the jurors unknown enter into and become one of a party and society formed and associated under the denomination of United Irishmen with design and for the end and purpose of aiding and assisting and adhering to the said persons exercising the government in France and so waging war as aforesaid against our said lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland And the said Patrick Finney and the said other false traitors to the jurors unknown who were then and there present together and so associated and united and there amounting in the whole to the number of 48 persons did then and there divide themselves in 4 splits each of which said splits contained 12 of the said false traitors and each of the said splits did then and there choose one of the said members thereof to be the secretary of such split and to meet consult and confederate on behalf of such split with divers other false traitors to the jurors unknown at a meeting of the said false traitors last mentioned to be held at the parish of St. Andrew in the said city and county of the city of Dublin under the denomination of a Baronial Meeting for the aforesaid purpose of aiding assisting and adhering to the said persons exercising the powers of government in France and so waging war as aforesaid against our said lord the now king in case they should invade or cause to be invaded this his kingdom of Ireland and after that the said secretaries were so chosen the said Patrick Finney with the other false traitors who were then and there present as aforesaid did then and there consult confederate and agree that a forcible and violent attack should be made by divers false traitors to the jurors unknown on his majesty's ordnance stores in his majesty's castle of Dublin in the city and county of the city of Dublin in which said stores his majesty's arms and ammunition for the use of his majesty's troops in this kingdom then were and usually are kept in order that thereby his said majesty should be forcibly and violently deprived of the said stores and of the said arms and ammunition therein contained.

And the said Patrick Finney and the said other false traitors who were then and there present as aforesaid in order to promote assist and facilitate the success of the said attack did then and there conspire confederate and agree that they and each and every of them should view White's-court in Great Ship-street the house and concerns at No. 48 Great George's-street and the stone-cutter's yard in the said street last mentioned and should give their opinions to the respective splits aforesaid whether said places were proper places to make an attack on the said ordnance stores so as that their secretaries aforesaid might be enabled to report their opinion to the Baronial meeting aforesaid.

And that afterwards and during the said
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war between the said lord the king and said persons so exercising the powers of government in France to wit on the 22nd day of May in the said 37th year of the reign of our said lord the king and on divers other days as well before as after that day at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in farther prosecution of his said treason and treasonable purposes with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet assemble consult conspire and agree to cause procure and incite the said persons exercising the powers of government in France being enemies of our said lord the king as aforesaid to invade this kingdom of Ireland with ships and armed men and to carry on the said war against the said lord the king in this his kingdom of Ireland.

And that afterwards and during the said war between our said lord the king and the said persons exercising the powers of government in France to wit on the 30th day of May in the said 37th year of the reign of our said lord the king and on divers other days and times as well before as after that day at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid in farther prosecution of his said treason and treasonable purposes the said Patrick Finney as such false traitor as aforesaid with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet propose consult conspire confederate and agree to raise levy and make insurrection rebellion and war within the kingdom of Ireland against our said lord the king in case the said person so exercising the powers of government in France should invade or cause to be invaded this his kingdom of Ireland or that part of his kingdom of Great Britain called England.

And that afterwards and during the said war between our said lord the king and the persons exercising the powers of government in France to wit on the said 30th day of May in the said 37th year of the reign of our said lord the king and on divers other days as well before as after the said day at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid in farther prosecution of his said treason and treasonable purposes with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet propose consult conspire confederate and agree to raise levy and make insurrection rebellion and war within this kingdom of Ireland against our said lord the king in case the said persons so exercising the powers of government in France should invade or cause to be invaded this his kingdom of Ireland.

And that afterwards and during the said war between our said lord the king and the

said persons exercising the powers of government in France to wit on the said 30th day of May in the 37th year of the reign of our said lord the king and on divers other days as well before as after the said day at the parish of St. Andrew aforesaid in the city and county of the city of Dublin aforesaid the said Patrick Finney as such false traitor as aforesaid in farther prosecution of his said treason and treasonable purposes with force and arms falsely wickedly and traitorously did with divers other false traitors whose names are to the said jurors unknown meet propose consult conspire confederate and agree to aid and assist encourage and support the said persons so exercising the powers of government in France as aforesaid and being enemies of our said lord the king as aforesaid in case they should invade or cause to be invaded this his kingdom of Ireland with ships and armed men against the duty of the allegiance of him the said Patrick Finney against the peace of our said lord the king his crown and dignity and against the form of the statute in that case made and provided.

There was a second count charging the prisoner with adhering to the king's enemies, and the same overt acts were laid as in the first count.

The prisoner pleaded Not Guilty.

And he was ordered to be ready for his trial, upon Wednesday the 13th.

Wednesday, December 13th.

The prisoner was put to the bar, and being asked was he ready for his trial? said he was not.

He then made an affidavit, stating—"That Arthur Roberts, esq., of Stradbally, in the Queen's county, was a material witness: that a crown summons issued directed to him, requiring his attendance on the 11th of December, instant. That deponent was informed and believed, that a copy of said summons was served upon said Roberts, personally, at his dwelling house in Stradbally, on Saturday last, at eleven o'clock in the morning. That deponent caused diligent search and inquiry to be made through the city of Dublin, at several places usually frequented by said Roberts when in town, and deponent was informed and believed he could not be found, and did not attend; saith he will use his utmost endeavours and hopes, and expects to procure the attendance of said Roberts, during the present commission or at the next commission of Oyer and Terminer, and cannot with safety to his life abide his trial without the benefit of the testimony of said Roberts."

Peter Leech made an affidavit, stating—"That he served the summons upon Mr. Roberts, Saturday the 9th instant; that Roberts

informed him he was then unwell, but would, if he was able, come to town and attend; that deponent made diligent search in several places where he considered said Roberts might be found; but was informed and believes he is not come to town."

[Upon those affidavits being read, the attorney-general desired, that Arthur Roberts might be called, which being done, he answered.]

The prisoner was then asked, whether he was ready for his trial, as Mr. Roberts attended?—He answered, he was not; and in order to postpone the trial, two other affidavits were sworn.

The prisoner made an affidavit, stating—"That on Monday the 11th instant, he caused a crown summons to be served upon a man of the name of James May, who lives in Cole-alley, near Meath-street, and who is a material witness on behalf of deponent; that he is informed and believes said May is lying dangerously ill at his said place of residence, and cannot attend; that deponent will use his utmost endeavours, and hopes and expects to procure the attendance of said May, if he should recover during this commission, or by the next commission, and that he cannot with safety to his life abide his trial without the benefit of the testimony of the said May."

William Mullally made an affidavit, stating—"That he served the summons upon May, who was then lying in his bed dangerously ill, unable to get up, or attend."

Mr. Curran, for the prisoner, moved to postpone the trial upon these affidavits.

Mr. Attorney General [The right hon. Arthur Wolfe, afterwards Lord Chief Justice of the Court of King's-bench, and Viscount Kilwarden] said, the motion came forward under very suspicious circumstances, as the name of May was not mentioned, until it was found that Mr. Roberts appeared, so that it was obvious, that this was an attempt to evade being tried.

The Court thought the application suspicious, and having intimated an opinion to that effect,

Mr. Matthew Dowling, the prisoner's agent, made an affidavit, stating, "That about a quarter of an hour after ten o'clock this morning, before the Commission Court sat, the prisoner applied to deponent, and desired him to have an application made to postpone his trial in consequence of the absence of Arthur Roberts, and in consequence of James May being confined to his bed, and lying ill, and requested deponent to have an affidavit of the service of the summons, by a man of the name of Mullally, on said May prepared.—That deponent immediately after met the prisoner's wife, and desired her to find said Mullally, and bring him to deponent, or some of his clerks, but deponent being informed,

and believing, at that time, and for some time after, that said Arthur Roberts was not in town, and that the trial would be postponed in consequence of the affidavits prepared, stating his absence, for that reason, and for that reason only, the other affidavits made this day by the prisoner and the said Mullally, relative to May, were not prepared at the time the other affidavits relative to Roberts were sworn."

After some discussion upon these affidavits, the Court were pleased to order the trial to stand over till the next day, and directed that in the mean time farther inquiry should be made respecting the state of James May's health.

Thursday, December 14th, 1797.

This day an affidavit was sworn on behalf of the prisoner, by Philip Tuite and James Rogers, stating, "That they had seen James May, upon the preceding evening, at No. 6, Cole-alley, who appeared to be dangerously ill, and that he had been confined to his bed for four weeks and upwards."

It was stated on the part of the crown, that a medical gentleman had visited James May, No. 6, Cole-alley, and that it was reported, his state of health did not permit him to attend in Court at this session.

The trial of the prisoner was then postponed until the 8th of January next.

Monday, 8th January, 1798.

The prisoner was put to the bar, and asked, whether he was ready for his trial?—he answered that he was not.

Mr. Curran, for the prisoner, moved to postpone the trial, which motion he founded upon an affidavit made by the prisoner.

This affidavit stated, that, "In the course of last week, he was first informed that Peter Henry and Thomas Gray, who live at or near Stradbally, are material witnesses for deponent; that he caused crown summonses to be issued, directed to said Henry and Gray, and to Roberts, who formerly attended, and that he caused Peter Leech to be sent down to the Queen's county, in order to serve the said summonses, who deponent is convinced has accordingly gone for that purpose, but has not yet returned; but deponent expects and believes said Leech will return in the course of this day, or in the morning; and deponent cannot with safety to his life abide his trial without the benefit of the testimony of the said Henry, Gray, and Roberts.

Mr. Attorney General opposed this motion, and said, the prisoner was not entitled to any farther indulgence: it did not appear from his affidavit, when the messenger was sent, and if he were not sent off in sufficient time

to have the witnesses in town this day, due diligence was not used to procure their attendance.

The Court said, they would make no rule for an hour, to see, whether the messenger and witnesses might arrive;—and having gone into other business which occupied the day, the prisoner was directed to be ready for his trial upon Wednesday.

Wednesday, 10th January, 1798.

The prisoner was again put to the bar, but said, he was not ready for his trial.

Mr. Curran.—My lords, I am instructed to move your lordships to postpone the trial of the prisoner to the next commission, or if your lordships should not be disposed to grant such indulgence, that your lordships would postpone to such shorter period, as you may think proper.—There has been a considerable number of affidavits made in this case at various times, principally relating to a man of the name of James May, who has been prevented by illness from attending to give evidence on the part of the prisoner. The Court thought his absence a sufficient reason for postponing the trial, and as he is still absent, and the cause of his absence continues to exist, it is hoped, the Court will postpone the trial.—Here are some additional affidavits which we desire to lay before the Court.

The two following affidavits were then read:—

"The prisoner, Patrick Finney, maketh oath and saith, that James May, of Cole-alley, in Meath-street, in the city of Dublin, is a material witness for deponent on the trial in this prosecution, and deponent saith, he hath caused a crown summons to be issued in this cause, directed to the said James May, requiring his attendance at the New Sessions House in Green-street, in the county of the city of Dublin, on this day, to give evidence on behalf of deponent;—and deponent saith, he is credibly informed, and believes that the said crown summons has been served on the said James May, personally, at his place of abode in Cole-alley aforesaid; but deponent is credibly informed, and believes, that the said James May is at present much indisposed, and confined to his bed, and not able to attend pursuant to the said summons; but deponent hopes and expects the said James May will be able to attend on behalf of deponent, either during the present commission, or at the next commission of Oyer and Terminer to be held for the county of the city of Dublin; and deponent saith, he is advised and believes he cannot with safety to his life abide his trial, in this case, without the benefit of the testimony of the said James May; and also without the benefit of the testimony of Arthur Roberts of Stradbally, esq. who is also

a material witness for deponent on his trial in this case, and who, as deponent is credibly informed and believes, has been served with a crown summons, requiring his attendance in this case, to give evidence on behalf of deponent, at the New Sessions House in Greenstreet, in the county of the city of Dublin, on Monday last, and to attend from day to day; and deponent saith, he does not mean to give any affected or unnecessary delay to this prosecution."

"Peter Leech of the city of Dublin, silk weaver, maketh oath and saith, that on Sunday morning about the hour of eleven o'clock, this deponent called at the house of Arthur Roberts, esq. in Stradbally, in the Queen's county, and then and there delivered unto the son of the said Arthur Roberts, above the age of eighteen years, a copy of a crown summons, requiring the attendance of the said Arthur Roberts, on Monday the eighth day of January, instant, to give evidence on behalf of the prisoner, in this cause, and to attend from day to day; and at the same time desired the son of the said Arthur Roberts to deliver the said copy to his said father, and which deponent verily believes he did, in as much as deponent was informed by Mr. Thomas Gray, who lives in Stradbally aforesaid, and who came to Dublin in company with deponent, for the purpose of attending as a witness in this cause, that the said Arthur Roberts had informed him, that he had been served with said summons, but that having signed a requisition for a meeting of several magistrates of the Queen's county, on Monday last, the said Arthur Roberts must attend said meeting, and could not attend till said meeting was over. Deponent also saith, on Tuesday evening, the 9th day of January, instant, this deponent personally served James May at his lodgings, at No. 6, Cole-alley, in the said city of Dublin, with a copy of a crown summons, requiring the attendance of the said James May, at the New Sessions House in Greenstreet, in the county of the city of Dublin, on this day, to give evidence on behalf of the prisoner in this case; and deponent saith, that at the time he so served the said James May, said May appeared to deponent to be very much indisposed, and totally unable to come abroad or attend pursuant to said summons; and said May at said time informed deponent that he was not then able to attend, or even to leave his bed."

The Court asked the attorney-general, whether any affidavit would be made on the part of the crown; to which he answered there would, and Dr. Harvey attending, he was sworn to the following affidavit, which was read:

"William Harvey, M. D. maketh oath that, on the 7th of January, instant, he attended a person, who called himself James May, at No. 6, Cole-alley, who is mentioned to be a witness in this case; that said James May is

confined to his bed, and is in a most emaciated and weak state, attacked with chronic head ache, and not able to leave his room to attend the trial, and saith, there does not appear to be much probability of the recovery of the said May, and believes said May may continue for a considerable time in the same state that he now is in, and that deponent hath known persons in the same state to live for several years, though not able to quit their beds—that in December last, he also attended the said May, and found him in the same state he was in when deponent attended him on the 7th of January, and that May said, he had been confined seven weeks previous to deponent's first seeing him."

Mr. Attorney General.—My lords, I am to oppose this motion which has been made on the part of the prisoner, and I have much to lay before the Court, beyond what has been stated. The prisoner was committed in the month of May last:—in the month of July following, a commission of Oyer and Terminer was held, at which the prisoner was indicted. A new session was held in the month of October, when the prisoner was called upon to be arraigned. The gaoler was desired to bring him into court; it was then suggested that the prisoner was ill, and unable to come up to be arraigned, and upon enquiry it appeared that the prisoner had feverish appearances, and he was not brought up that day.—Upon the next day, it was desired on the part of the Crown, that he might be brought up; it was again said he was unable to attend, and Dr. Scott, the physician, was sent to visit him; the doctor returned, and was examined upon oath, touching the state in which he found the prisoner. He did say, that the prisoner said he was ill; the doctor was asked, what he thought respecting the prisoner's health—he said, he was inclined to think it was a sham illness.

Mr. Justice Chamberlain.—We cannot attend to this, not appearing before us now by affidavit.

Mr. Attorney General.—It was a parol examination certainly, before another judge. But I may state this:—that the prisoner was not arraigned at that session. At the ensuing sitting, in the month of December, the prisoner moved to put off the trial upon an affidavit, by which it was stated that Arthur Roberts, a resident of Stradbally, thirty miles distant from Dublin, was a material witness, and had been served with process, and did not attend. He however was called, and answered his name: thereupon an affidavit was made, that James May, the person now mentioned, was confined in Cole Alley, by illness, and was unable to attend, but that his attendance at a future day was expected. I did then, on the part of the crown, observe upon the extraordinary attempt to put off the trial, by swearing that Mr. Roberts did not attend, and when that failed, that another person

should be mentioned. The prisoner's attorney then made an affidavit, that he had been really instructed, that May was a material witness, and that the first affidavit was confined to Roberts, because if one were absent it was thought unnecessary to say any thing respecting the other. The motion was then entertained upon the absence of May, and the Court expressed a wish, that a gentleman of the medical profession should visit the alleged witness, upon which the discussion was postponed until the next day, when it appeared, that the person was in an ill state of health, and unable to attend. Thereupon the trial was postponed till last Monday, and now your lordships are called upon to postpone it till the next commission, and the ground upon which the application is made must, upon the present debate, be conceded to be, that May is now unable to attend; I say, that must be conceded as the ground, because Roberts may be had most probably; or if he be not attending now, he may be had by next Monday. The decision of this question must be, as a precedent of great importance. It is now solemnly debated before three judges of the land sitting together.* The general grounds of postponing trials are these:—the witness, on account of whose absence the trial is postponed, must appear to the Court to be a material witness for the trial, and that the application is not made merely for the purpose of delay, but for the attainment of justice: it must appear that proper means have been used to procure the attendance of the alleged witness, and that there is a reasonable ground to hope, that the witness will attend at a future day.—I believe these general rules are to be collected from the cases decided upon the subject. It must appear, that the witness is material; it is by no means sufficient to swear, that he is so: if, upon examining the several affidavits that are made upon the motion, the Court shall collect, that the motion is not made for the purpose of attaining justice, or the prisoner's defence, there, however positively the prisoner or any other may aver the fact, yet that fact shall not conclude the case. Instances of that sort are not infrequent. In the Chevalier D'Eon's case, though it was sworn positively, that a witness was material, yet it appearing from the whole of the affidavits that the case was not so, the Court concluded, that the application was for the purpose of delay, and they refused to postpone the trial.

I submit to your lordships, that the prisoner's object is to postpone the trial, and not to have the witness attending. If your lordships are satisfied of that, the trial cannot be postponed; and again, I submit, that another of these rules fails the prisoner, namely, that there is a reasonable expectation, that the attendance of the witness will

be procured. When I state this I am sensible it is a new case, and of great importance. It is of the greatest importance, not to the prisoner alone, but upon general principles in the prosecution of criminals charged with offences.

Your lordships will be pleased to observe, that it does appear from Dr. Harvey's affidavit, that May is lying in the same dangerous state as he was in October, seven weeks before the 11th of December.—It appears by Mr. Dowling's affidavit, upon the 11th of December, that the prisoner told him that morning, that May was a necessary witness; but he does not say, that the prisoner ever suggested, that the witness was material, although the prisoner was indicted many months before, and his present agent was employed by him. The prisoner was served with a copy of the indictment, and it must be presumed that he was preparing for his defence. May had been lying bed-ridden in Dublin seven weeks before. The prisoner now desires to postpone his trial upon the absence of a witness, who never appeared before to be necessary; and therefore I submit, that there is ground to conclude, that the prisoner has mentioned this May for the mere purpose of postponing the trial, and not for the purpose of attaining justice; and to that is to be added this circumstance, that he mentions this day the names of two persons never mentioned before. He endeavours to account for that, by saying, that he was informed, without saying he believes it, that they are material witnesses. Therefore I say there is ground to conclude, that the prisoner does not desire the postponement to procure the witness to defend himself, but for the purpose of delay.

As to the other ground, that a witness is sick and unable to attend, and upon whose account the trial has been so often postponed, how does that stand? Dr. Harvey has been called upon to examine the man, the prisoner has not sent any medical person to visit him; if the crown had not sent the physician, the fact would be this:—In December the man was sick, and the prisoner would say, he thought him sick, and the bailiff said he had served him with a summons. But it was right and fair, that the Court should know the whole circumstances of the case, and that the prisoner should have advantage of the situation of the witness, if he can have any. This man has been eleven weeks bed-ridden; extremely emaciated, with little prospect of recovery; and Dr. Harvey says he has known men in the same state live several years; the consequence of putting off the trial on account of the absence of this man, will be, in all reasonable probability, to put it off during the life of the witness. Here then, the general rule fails, that there is a reasonable expectation, that the attendance of the witness can be procured. It is of great consequence to the administration of public justice, that this case should be well and soundly consider-

* Mr. Justice Chamberlain, Mr. Justice Downes, and Mr. Baron George.

ed. If your lordships are satisfied that this alleged witness has been fixed upon with a view to delay, there can be no doubt that the motion must be refused. But then on the other hand, if such be not the object of the motion, there arises a great and abstract question, namely, that where the Court are satisfied the attendance of a witness cannot be had, whether the trial shall be from time to time postponed, until that person shall die. If the affirmative of that proposition were established, the consequence would be, that a man, unwilling to hazard a trial, would have nothing to do, but to fix upon a debilitated person, likely to live, but unable to attend: there are few towns, where such persons cannot be found, and such a general rule would be of dangerous tendency. Therefore the motion ought to be refused; because the object is delay, and not the administration of justice; and because one of the rules applicable to cases of this kind fails, namely, that there is a reasonable expectation of the attendance of the witness at a future day, to which the trial may be postponed. I say this much, my lords, upon a case of great importance, and somewhat new, making a precedent, affecting the general administration of justice—therefore it is of more importance than the question, whether the prisoner's trial shall be postponed to Monday, or some other short time, I am sure the case will receive that consideration it deserves, and every one will be satisfied with the decision.

Mr. *Solicitor General* [John Toler, afterwards Lord Chief Justice of the Court of Common Pleas and Lord Norbury].—My Lords, Mr. Attorney General has stated the minute circumstances of the case, and this being a case likely to be drawn into precedent, I may be allowed to say a word in addition. It certainly is a first principle of our law, not to accelerate unnecessarily the trial of a man for his life, and particularly when charged with so high an offence as that which is the subject of the present indictment. On the other hand, your lordships will think it is of the utmost concern, that offences of this kind, with which the prisoner has been so long charged, should, after reasonable indulgence, be brought to trial. The witnesses for the crown cannot be ensured to live, and it is part of the calamitous mischief of the times, that witnesses are murdered and conspiracies formed against them.—

Mr. *McNally*.—I hope this is not to attach upon the prisoner.

Mr. *Solicitor General*.—I was going to conclude the sentence, if I had not been interrupted, with saying, God forbid that such an intention should ever be supposed to be harboured in the mind of the man at the bar, whom I am willing to suppose for the present to be innocent of every crime. But I did not wantonly abuse the privilege which the Court allowed me, in urging the possibility of that mischief happening to a witness, who is now

forthcoming; at the same time, that nothing is more foreign to my feelings than to impute the most remote idea of such a proceeding to the prisoner.

I look upon the great ground, upon which these motions are decided, to be that which shall regulate the discretion of the Court, under all the circumstances, as to the materiality of the witness. It is a first principle, that from the time of the committal, the party is supposed to be preparing for his defence. Here the committal was in May in the city of Dublin. Your lordships are not only in possession of the precedents and cases, but you recollect the remarkable passage in Foster,* where he observes, that upon occasion similar to the present, affidavits of this kind ought to be sparingly admitted. The materiality of the evidence is the principal ground: under all the circumstances, have you enough to regulate your discretion, and to enable you to presume, that the witness is not material? I hope to satisfy your lordships, that you must presume it. First, the trial ought to have been had in October—the party had reason to expect his trial at that time. Next, the adjournment was to December, and the witnesses now mentioned were not summoned until the eve of the day preceding the trial. At one time the agent is informed of the materiality of the evidence upon the morning of the trial. The agent was at that time prepared with counsel and briefs, and the necessary ingredients upon which to defend his client: then upon that day, for the first time, after the failure of an attempt which had been relied upon, the prisoner states he is informed this witness is material.—What! a trial prepared for so long a time—all due and solemn preparation had—counsel and agent assigned in July—the defence arranged—and on the 9th of December, the same active agent informed the Court, he first heard of the materiality of the witness. These circumstances, together with his having relied upon the absence of another witness, speak more emphatically than any argument. If the application were to adjourn to some very early day, such as the approaching Monday, I should not be disposed to object to it. In Fitzgerald's case, there was a postponement at the first assizes, and a similar attempt was made upon the adjournment. The combination of circumstances was weighed by the Court, and the indulgence had been given in the first instance to take away the possibility of a doubt, yet it would not be conceded in the latter. Here the prisoner has been indulged, and has not entitled himself to a repetition of it.

Mr. Justice *Chamberlain*.—It is our determination to call the judges together, and have their opinion upon this case. We shall give their decision on Friday next, and in the mean time we shall have all the affidavits which

* See Vol. 18, p. 331.

have been made in the case, furnished to the judges.

[*Note.* That sixteen other persons indicted for the same offence said they were ready for their trials.]

Friday, January 12th, 1798.

The prisoner was put to the bar, and asked, whether he was ready for his trial?—He answered in the negative.

Mr. Justice *Chamberlain*.—In this case there has been an application on the part of the prisoner to put off his trial; there was something indefinite as to the time. We understand, however, in substance, that it is a motion to postpone the trial until the next commission, because the approach of the term will not admit of a trial, if it be put off farther than Monday, or Tuesday next: so that substantially, the question is, whether this motion shall be complied with by putting off the trial until the next commission?

Motions of this kind, particularly where the charge against the prisoner is high treason, must always be of the utmost importance; and in consequence of that, and of some novelty in this case, it was the opinion of two judges with me, that this matter ought to be referred to all the judges in town. It has been accordingly referred to them, and I am now authorized to deliver their unanimous opinion. All the judges were present, except Lord Yelverton, Mr. Justice Kelly, and Mr. Baron Metge. The nine judges in town are unanimously of opinion, that this motion, in the extent in which it is made, cannot be complied with.

Motions of this sort are always addressed to the sound discretion of the Court, founded upon affidavits; but the affidavit is not to be held to contain sufficient ground for putting off the trial, merely because it is in common form. The Court must be satisfied that due diligence has been used to bring the witness whose attendance is sought for;—2ndly. That the absent person would be really a material witness, or at least that the prisoner or other person making the affidavit on his behalf does believe so;—and 3rdly. That there is a reasonable expectation of his being produced at a future day.

With regard to this witness, James May, being a material witness, it is necessary to consider all the circumstances attending the prisoner's application to the Court. He is charged with high treason together with sixteen other persons: upon looking into the informations, he is charged with having taken the most active part; they are all complicated in one charge; the defence, in all probability is a common one, all but the prisoner have presented petitions under the Habeas Corpus act to be tried, and upon being called up have insisted upon being tried. The prisoner

alone is not ready. If they have been regular in their petitions (upon which I give no opinion at present) they must be tried at this commission, or be discharged. If they shall be tried, the crown will be under the necessity of publishing the evidence against the prisoner, who is charged as the leader in the treason.

It appears that the prisoner was committed in the month of May last, at the July commission counsel were assigned him, and at the same time Mr. Dowling was appointed his agent: in the October commission, it was proposed, that he should be brought into Court to plead, when it was suggested, that his health would not admit of it; Dr. Scott was sent into the gaol, and he reported, that he did not think the prisoner to be in a state to be brought into court. In a few days after, Dr. Scott was examined in court upon oath, and he then, as I am authorized to state by Mr. Justice Boyd, who presided at that time, declared, that he did believe the inability of the prisoner had proceeded from some medicine he had taken to agitate his pulse.

However, in that commission he was not arraigned; Dr. Scott was asked, whether the prisoner was able to undergo a trial, and he would not take upon him to say, that the prisoner was able to undergo a long trial. Therefore the counsel for the crown did not press to bring him forward at that time.

The next step was upon the 13th of December, when the prisoner was called upon to take his trial. He had been previously arraigned; and upon that morning, he was called upon to take his trial. An affidavit was made by the prisoner, stating, that a Mr. Roberts was a material witness for his defence, that he had been served with a summons, and did not attend, and therefore the prisoner moved to postpone his trial; but upon Mr. Roberts being called, it was found he was in court. Then the prisoner, finding himself disappointed, made another affidavit, stating, that James May was a material witness, that he had been served with a summons, and that without his presence he could not go to trial with safety. It seemed extraordinary that May should not have been included in the first affidavit; upon which Mr. Dowling, the prisoner's agent, made an affidavit, stating, that it was owing to an omission of his; for though May was not included, the prisoner at about a quarter of an hour after ten o'clock that morning, before the Court sat, had applied to him to have a motion made to the Court, to postpone his trial in consequence of the absence of Roberts and May, who the prisoner told him were material witnesses for him on the trial. It must be remembered that Mr. Dowling had been assigned as attorney to the prisoner in July, and this affidavit was made on the 13th of December, from which it does not appear, that May's being a material witness had been intimated to Mr. Dowling before that day. And the attorney

of the prisoner whose duty it would have been to have examined May, if there had been any intention of producing him, omits to state upon his belief, that May would be a material witness.

However, upon these affidavits the trial was put off for some time, and so from time to time until the last adjournment, and the prisoner stood for trial on Monday the 8th of this month; upon that day he was to have expected his trial, and just as he was called on, Mr. Dowling produced an affidavit of the prisoner's, by which it appears, that Roberts and two other persons had been served with summonses to attend on Monday.—But it is observable that the summonses were only served the day before, the witnesses live in the country, one of them in Stradbally, thirty miles from Dublin, so that it would hardly be conceived, that the prisoner was serious in the service of the summonses.

This affidavit upon which he moved before me mentioned three persons, Henry, Grey, and Roberts; but does not make any mention of May, this material witness, and his counsel at first moved, stating the absence of the three witnesses in the affidavit, of whom May was not one;—upon a conference, however, the necessity of May's attendance is revived, and all that passed upon a former occasion is again stated.

The next affidavit is one sworn upon the 11th of January by the prisoner, stating that May was a material witness, and had been served with a summons, and the man who served it appears to have served it on Tuesday the 9th, although the trial had been expected upon Monday the 8th, for which day, May does not appear to have been summoned; he was not summoned until the day after the trial was to have taken place. So that in fact that service was evidently for the purpose of motion, not for the trial.

Taking all these circumstances together, it was for the consideration of the judges, whether they believed, that the allegation of May being a material witness was founded, or not?

And they are unanimously of opinion, that although a trial should not be pressed forward, where there is any danger to the prisoner from his not being prepared; yet, that the truth of the allegations in the affidavit for putting off the trial must be judged of by them:—That it is in fact an issue directed to the judges, whether the application be made for the purpose of delay, or not? And that there are many circumstances to be collected in this case, from *times and dates* of the affidavits, the times of serving the several summonses, the conduct of the prisoner and his attorney, and the particular situation of the case as connected with other prisoners, which induce a belief, that this application is not what it is professed to be, but is intended either for unnecessary delay, or as a stratagem made use of to compel the counsel for the

crown to disclose their evidence, or discharge the other prisoners under the Habeas Corpus act; if they have been regular in their proceedings. The judges, having with the utmost attention read all the affidavits, cannot say that this is a fair *bonâ fide* application, in order to provide necessary evidence for the prisoner.

With regard to the situation of May, it is something extraordinary, on the 13th of December Dr. Harvey visited May, who said he had then been confined seven weeks; he states him to be afflicted with a chronic head ache, and that there is not much probability of his recovery, but that he may linger many years. If this motion were complied with from May's situation, and the trial were put off till next commission, the prisoner would be entitled, during May's life and inability to attend, *toties quoties* to put off his trial. However, in stating this, I am desired by the judges to say, that if they were satisfied upon the other grounds, that this application was necessary to the defence of the prisoner, and fairly made, they, notwithstanding the situation of May, might postpone the trial, to see whether it might not please Providence to restore him at some future time.

But upon the whole, they are of opinion, that it is not fit, or meet for the administration of justice, that this application should be complied with in the extent which is sought. However, the prisoner will have till Monday to prepare for his trial, which will be near eight months after his committal, and two months after the sickness of the witness.

The Clerk of the Crown then told the prisoner to be ready for his trial upon Monday, to which day the Court adjourned.

Monday, January 15th, 1798.

The prisoner was put to the bar, and asked whether he was ready for his trial.

Patrick Finney.—My lords, although I am deprived of the testimony of May, I hope the Court will not deprive me of the other witness, Mr. Roberts; I sent a man and horse for him on Friday evening.

Court.—If you have any thing to lay before us it must be by affidavit, otherwise the trial must go on.

The panel was then called over, and when the prisoner was put to his challenges, he tendered an affidavit.

Mr. M^r Nally.—I move your lordships to have this affidavit read.

Which was accordingly ordered.

It was an affidavit made by the prisoner, stating, that Arthur Roberts was a material witness, and that on Friday the 19th of January, he caused a crown summons to be issued, directed to said Roberts, requiring his attendance on Monday the 15th instant;—that deponent sent Peter Leech, with a hired

horse, to serve said summons; that Roberts had not come to town, nor had Leech returned; but deponent hopes and expects the attendance of said Roberts in the course of this day, as said Leech had particular directions to inform said Roberts, that deponent's trial would positively come on this morning.

Mr. Attorney General.—My lords, I must oppose this application. Your lordships are aware of the circumstances, which have already occurred. The ground of this application is, that on Friday, without saying what time of the day, a messenger was sent to Stradbally, thirty miles from town. This is not that sort of diligence, which might be expected: it might have been late in the evening of Friday. He has been a prisoner many months, and it is not using due diligence to have sent a messenger some time on Friday. It may be said, that till Friday, he did not know the result of the former application. But as he did not know it, he was bound to be ready for his trial. The Court might have ordered his trial for Saturday; and it is no excuse, that he did not send till Friday.—He says he expects the witness in a few hours.

Mr. M^r Nally.—My lords, I say nothing as to the right of the Court to bring a trial on; but they have discretion and humanity. It was four o'clock on Friday, before the prisoner knew his trial would come on this day: the instant he was apprized of that, he sent off a messenger to Stradbally. Roberts had been served with a summons for the 8th, but could not attend on account of a sessions of the peace. In the case of a man upon trial for his life, his situation will have greater weight with your lordships than any thing I can add.

Mr. Justice Chamberlain.—Notwithstanding the royal proclamation for a public thanksgiving to-morrow, we must sit; and therefore we will put off the trial to that time. There are many prisoners in the gaol to be tried, and they are entitled to be tried; therefore from the necessity of the case, term approaching so near, we must sit to-morrow. Prisoner, you must endeavour to be ready to-morrow.

Tuesday, January 16th, 1798.

The prisoner was put to the bar, and asked whether he was ready for his trial.

Prisoner.—My lords, I am informed, that Mr. Roberts is not arrived yet.

The panel was then called over.

Mr. Curran.—My lords, I shall not mention any thing as to the competency of the Court to sit upon a day set apart by a proclamation for particular observance, or to fine a witness who may be absent, or the jurors who do not attend. The messenger is returned from Stradbally, but the witness is not arrived. He might suppose he would not be wanting

upon this day, though he might have been bound to attend yesterday. The prisoner may in some measure lose the benefit of challenges by the absence of persons returned upon the panel. The challenge is in favour of the party and for his ease of mind.

Mr. Justice Chamberlain.—You do not want to challenge men who are not here.

Mr. Curran.—No, my lord; but many being absent may oblige us to accept of some upon the jury whom otherwise we would challenge.

An affidavit was then read:—it was made by Peter Leech, and it stated, that on Friday evening last, after the Court had adjourned, he received directions from Matthew Dowling, the prisoner's agent, to go then immediately, and with as much expedition as possible, to Stradbally, for the purpose of serving a crown summons upon Arthur Roberts, requiring his attendance to give evidence on Monday the 15th of January, instant; and having got such summons and a copy thereof, proceeded to Stradbally aforesaid, with all the expedition in his power, and on Sunday morning last, about eleven o'clock, served the said Arthur Roberts with a copy of the summons, by delivering the same to his son, aged twenty years and upwards, at the house of the said Arthur Roberts in Stradbally, and at the same time desired him to deliver the said copy to his father the said Arthur.—And deponent saith the said son at the same time told deponent, that the said Arthur Roberts was not then at home, but that he could not attend pursuant to said summons, as he, said Roberts, was obliged to attend another sessions at Stradbally, and the said son said he would not receive the summons, and wanted to return same to deponent, which deponent refused, and left said copy with said Roberts's son.

Mr. Curran.—There is strong ground laid by this affidavit to postpone the trial.—As to the other circumstances to which I alluded a minute or two ago, they are judicially in the knowledge of the Court. I may venture to say, it was not expected by any person, that the Court would sit this day. It is not for me to say, what was in the mind of the Court itself, but I understand it was said to be a sitting made necessary by the peculiar state of business—when that was not the idea of the public or of Mr. Roberts, in what a situation will my client find himself, if thus circumstanced he undergoes a trial? Your lordships have judicial knowledge, that many of the jurors do not attend.

Court.—The officer informs us eighty-seven attend; only seventy-four appeared yesterday.

Mr. Curran.—It is true; but the law gives him certain privileges, and his power as to repelling a certain number is abridged; if any one of the jury, who would be the object of his choice, be absent, he cannot have that choice, and he may be obliged to put himself upon some other, perhaps a very worthy man,

but with whom the prisoner might not think his heart at ease, and he might lose that collection of mind, which is necessary for him to make communication with his counsel for his defence. I mention the case of a single juror; it is manifest, I am understating the hardships of my client, when I am stating the case of a single juror being absent.—It may be the entire change of his jury—the staying away of twelve men under an impression that no business would be done. I feel the force of the objection which may be made, that a smaller number appeared yesterday. That may be a circumstance of terror upon the mind of the prisoner. I do not know what kind of construction his mind may give it.—Now, my lords, can a juror be fined? suppose an application made to fine any juror who does not appear; will not the Court think it an excuse, that such a man should come afterwards and say, “I read a proclamation enjoining a particular mode of duty for this day.—I did suppose that would have been yielded to by courts of justice, and in obeying that proclamation, I did not think I would incur the censure of his majesty’s court of justice.” Would it be possible to fine that man?—It would be hard to inflict a penalty upon any man attending to that proclamation. I need not press this matter farther. The great mind of the Court will supply every collateral circumstance. In a case of this importance, the trial should stand clear of every doubt. I need not warn the Court. Their own humanity and good sense make it unnecessary. I am assured of that. I confine myself to the situation of my client, and I beseech your lordships not to suffer this trial to go on, until there can be a means of compelling all the panel and all the witnesses to attend. They come within the same class of objection, with this difference, that there is more fatality to the prisoner in the case of a witness. I cannot suppose that any juror comes into the box with an unfair impression upon his mind; but the prisoner may know matters worse than I do. As to a witness, it is clear, that his absence may be the difference of life or death to the party. The determination of the Court yesterday to sit this day, could not have reached Mr. Roberts, and therefore, I trust, the Court will think under these circumstances, that it would be a great hardship to bring this trial on, and that your lordships will not do it.

Mr. *M’Nally*.—If your lordships minds be not made up, I will suggest one objection. The proclamation says, “We strictly charge and command that said day be regularly observed;” and all prosecutions are carried on in the name of the king; and this is a case not merely of that species where the name of the king is used to procure justice for the subject, but it is a prosecution particularly carried on at the suit of the king himself, for an injury to himself. This day then being appropriated, by the king, to one particular pur-

pose, that of religion, I submit whether this act of the king, who is the fountain of justice, and has a control over the Courts, is not an adjournment by the king himself. I leave this to your lordships discretion, whether it be of sufficient force to induce you to adjourn till to-morrow.

Mr. *Attorney General*.—My lords, on the part of the crown, I find it my duty to oppose this motion, leaving it certainly to your discretion, and only saying thus much; with regard to the objection on the ground of the proclamation, it would have been more decorous to the proclamation, and the city of Dublin, to have made the objection yesterday: it is no objection in law against the sitting of the Court; but it must be obvious to every man, that the sole object, which the Court had in sitting was, to deliver the gaol, and though I was anxious, with others, to have attended religious service this day, I did upon that ground, submit to the Court sitting for the dispatch of business. I cannot suppose the counsel serious in his objection on account of the attendance of the jury. He says, he cannot tell what terror there may be upon the prisoner by reason of their number. I am incapable of understanding what he means. The prisoner can be under no terror; he has received from the Court, from the first day, down to this hour, every indulgence which man could have, and extraordinary indulgence indeed. Another objection is, that Roberts does not attend. The messenger had not thirty-eight miles to go, and he did not arrive at Stradbally until Sunday morning; that was not due diligence. I do solemnly declare that I wish Mr. Roberts were present. But I submit to your lords that it is unusual to put off a trial from time to time in this manner. If the witness do not attend, he may be punished; but if a prisoner will swear that a person is necessary to his defence, and that person will not attend, the prisoner may never be tried. But upon the whole matter, I submit it to your lordships, whether you will proceed or not. I know not whether Mr. Roberts be in town or not; it is only stated, that his son said, he would not attend; we cannot suppose he will pertinaciously disobey the summons. I say thus much, my lords, because I thought it necessary; men should reflect upon the reason of the Court sitting this day; it is in favour of the prisoner. The Court had no other object in adjourning to this day, but to give the prisoner an opportunity of proving his innocence, if he can, and that he may be discharged from the gaol.

Mr. *Justice Chamberlain*.—It was out of favour to the prisoner that we did not sit yesterday. We adjourned to this day to accommodate him. We have no manner of difficulty in saying, that this trial must go on. Due diligence does not appear to have been used. That is an essential point in cases of this kind. The trial was to have come on yesterday, and the summons was not served

until eleven o'clock on Sunday. That is an ingredient upon which this case has been governed, and has been determined by all the judges here.

As to the proclamation, it hardly lies in the mouth of the prisoner to make an objection upon it. He made an objection to his being tried yesterday, and lest by possibility injustice might be done, we did, with great pain to ourselves, adjourn to this day; therefore I think this objection does not lie in the prisoner's mouth, or that of his counsel.

With regard to the jury, I cannot understand that objection. A full panel appears, and if either Baron Smith or I could, in the most remote degree, conjecture, that any injustice could occur, we would postpone the trial. Therefore the trial must go on.

Prisoner.—My lord, the messenger was detained on the road. The character of the prosecutor is so infamous.

The following jury was sworn:—

Patrick Bride,	Wm. Snell Magee,
Robert Patten,	Maurice Roberts,
David Weir,	Thomas Roberts,
Richard Lewis,	Bishop King Cunliffe,
Patrick Jones,	Christopher Ormsby,
Thomas Read,	Edward Armstrong.

Eight persons called on the panel were put by on the part of the crown.

Nineteen were challenged peremptorily by the prisoner.

And four were challenged for want of freehold.

The Court ordered the prisoner's irons to be taken off.

Mr. Ridgeway opened the indictment.

Mr. Attorney General.—My Lords and Gentlemen of the Jury; The prisoner at the bar stands indicted before you for high treason.—Of treason, gentlemen, there are several species. He stands charged with two species; one is, compassing and imagining the death of the king; the other is, adhering to the king's enemies—adhering to the persons exercising the powers of government in France, being at war with the king.

Gentlemen, the first species, that of compassing and imagining the death of the king, ought to be explained to you; that duty the Court will no doubt, fully discharge, I shall therefore content myself with briefly stating, that in order to bring the charge home to the prisoner, it is not necessary to produce evidence to show, that he had it in his immediate design and contemplation to take away the life of the king. In our law, any act done that leads naturally, ultimately, or in its consequences to destroying the royal life, is considered as an overt act to compass the death of the king. The preservation of the life of the king is necessary to the tranquillity of the state: any attack upon that life, however indirectly, has a tendency to destroy that tran-

quillity, and the peace and prosperity of the subjects whom he governs. As for instance; if war be levied, though not for the purpose of destroying the life of the king, it has a tendency to destroy it; because he must resist that war, and thereby his life will be endangered. Again, if conspirators invite the foreign enemy to invade the kingdom, it is settled law, that it is a compassing the death of the king, because his life must be exposed in resisting the enemy, if they invade the kingdom.

The other charge is for adhering to the king's enemies. The term itself sufficiently explains the nature of that crime. By *enemies* are understood those who are at war with the king, and any adherence to such persons, thus at war, constitutes that species of high treason.

Gentlemen, the law of this country makes it necessary, that persons charged with treason, the highest offence that a subject can commit, shall be informed by the indictment of some act or acts, upon which the charge is founded, in order that they may know how to prepare for their defence. The acts so to be disclosed by the indictment are called *overt acts*—acts which are to be plainly proved to you by legal evidence.

The charge here is, that the prisoner compassed and imagined the death of the king, and adhered to the king's enemies; but that is not enough, such is the care taken of the lives of the subjects—it is not enough to charge the offence generally, but the particular overt act must be set out, and it must be proved to enable the jury to find a verdict against the prisoner, and that he may come prepared with evidence to meet that fact, which is the ground of the principal charge.

Thus, gentlemen, you perceive, that to support the charge against the prisoner, we must prove by sufficient evidence some one overt act laid in the indictment; if any one of those overt acts be established, you must find a verdict against the prisoner, though we fail in supporting all the others.

Gentlemen, in support of this charge, there are thirteen overt acts laid in the indictment.—I shall briefly state them. The overt acts laid are the same in both counts of the indictment.

The first overt act is, that the prisoner became a member of a society formed for the purpose of assisting the French in case they should invade this kingdom, and that he did meet with other false traitors to deliberate upon the means of effecting that purpose.—I will not consume time by minutely observing upon each overt act: there is no man so dull as not to understand this overt act;—to encourage the king's enemies to invade the kingdom is a proof of adhering to the king's enemies.

The second overt act is the same in substance with the first.

The third is, that he consulted and agreed

with others to send one or more persons into France as agents, to invite the persons exercising the powers of government there to invade this kingdom.

The fourth is for collecting sums of money to pay the agents who were or should be sent into France—to pay and maintain persons who should be seduced from his majesty's forces, and persons charged with crimes and confined in prison.

The fifth is, sending four persons to France to invite the French to invade Ireland, and to aid them when they should arrive.

The sixth is nearly the same with the other, to raise money.

The seventh is, that the prisoner consulted with others to raise and levy war and rebellion within the kingdom.

The eighth is, that he met forty-eight persons, and consulted with them upon the means of attacking the king's ordnance stores in the castle of Dublin, and to seize upon the arms there deposited, and appointing certain persons to view three particular places, mentioned in the indictment, adjoining to the ordnance, in order to consider and report, where there were proper places for making such attack. Gentlemen, to state this overt act is sufficient to explain, that it is evidence of treason in both counts, no words can make it stronger; men assemble together, and do consult, and send some of their members to view the stores and to consider, where an attack should be made upon the stores, to enable the society to seize upon them, to make war upon the king, and to aid the French.

The ninth overt act is, that the prisoner did join with others for the purpose of aiding the French.

The tenth is, that he did with others meet and agree to procure the French to invade this kingdom with ships and armed men.

The eleventh is, that he did agree to raise insurrection, rebellion and war within the kingdom.

The twelfth is much of the same import, and the thirteenth is, that he did agree to support the French in case they should invade the kingdom.

You are now apprized of the charges against the prisoner, and the particular overt acts laid in support of those charges, some one of which must be clearly and satisfactorily proved to induce you to give a verdict against him.

It is now my duty to state the facts and the evidence, that will be adduced to support the charge, and in doing so, it is my intention to lay before you purely the evidence stated to me, and that without exciting your feelings in any respect whatsoever—careful not to excite yours, and anxious, I solemnly assure you, to suppress mine.

Gentlemen, it will appear, that there did last summer,—I go no farther back,—exist in this city and kingdom, a society, styling itself

a society of United Irishmen—this society was subdivided into an indefinite number of societies: the members took an oath, upon their being admitted into any society, to keep secret, and not to give evidence against any of their brethren.

These societies as they happened to grow numerous by the admission of members, divided themselves into what are called *Spirits*, consisting of twelve, and each society elected a treasurer and secretary. There were in every barony and certain other districts Baronial Committees, formed of the treasurers and secretaries elected by each particular subdivision; and of each barony and district, and to the Baronial Society or Committee, the sub-societies did make reports of their several transactions by their respective treasurers and secretaries, and receive through their secretaries and treasurers the orders of the Baronial; from the Baronial Committees were formed County Committees, to whom the Baronial Committees made their reports, and from whom the Baronial Committees received orders, and from the County Committees, Provincial Committees were formed, and so by gradation to a National Committee.

If I am rightly instructed, it will still appear, that the object of these societies was and is, to subvert the constitution, and that the means intended to be used to effect this purpose were, to invite the French nation to invade this, their native country, to organize the people whom they should seduce to join them, and to seize the arms of his majesty in the stores, provided for the defence of the kingdom.

Such is the general outline of this United Society. I come to the more minute particulars of the present case; and the facts which I shall state will appear throughout to be connected in every step with the statement I have made of the nature of the society.

A man of the name of James O'Brien upon the 25th of April, 1797, was passing through Thomas-street, in this city; he met a man who was his acquaintance, named Hyland, standing at the door of one Blake, who kept a public-house. The prisoner at the bar, then, as I believe, a stranger to O'Brien, was standing at the door; Hyland asked O'Brien *was he up?*—which is, I presume a technical expression to signify that a man is a member of the Society. They tried O'Brien by the signs, whether he was or not. They told him, that no man's life was safe, if he were not up; and particularly, the prisoner at the bar told O'Brien his life would not be safe, if he were not up;—they desired O'Brien to go into the house, in a room of which eight people were sitting: there, after some discourse O'Brien was sworn to secrecy, and afterwards he was sworn to that oath, which is called the oath of the United Irishmen. They talked much of their strength—of the number of men and

arms provided in various parts of the kingdom, so great as to render the attainment of their object certain; and after much other discourse, which it is unnecessary to state, they adjourned their meeting to the house of one Coghran, in New-market on the Cornbe, to be held the next Sunday, the 30th of April; they agreed, that the pass word to gain admittance at Coghran's, should be "*Mr. Green*."—And it appears (for the trade is attended with some profit) that O'Brien was called upon to pay, and did pay the prisoner one shilling for swearing him.

As soon as O'Brien left the house, and escaped the danger he imagined he was in, he went to Mr. Higgins, a magistrate of the Queen's county, to whom he was known, then in Dublin, and disclosed to him what had passed. Mr. Higgins told O'Brien he was right to reveal the matter, and brought him to lord Portarlington, who brought him to one of the committee rooms of the House of Lords, where he was examined by one of the lord lieutenant's secretaries. It was thought expedient, that attention should be paid to this society, seeing its dangerous tendency, in order to counteract the designs entertained. O'Brien conceiving that he might be in some danger from a society formed upon such principles, was advised to enlist in one of the regiments of dragoons then quartered in Dublin, and to attend the society to learn their designs. With this view, O'Brien attended at Coghran's house, in New-market, and was admitted upon giving the pass-word, "*Mr. Green*." He there found the prisoner at the bar with forty others assembled; he was desired to pay sixpence to the funds of the society; he said, he had not then sixpence; they told him he was to return in the evening, and that it made no difference, whether he then paid or brought it in the evening.—Finney informed him and the society that the money collected was to constitute a fund for the purposes of the society, that upon that day there was to be a collection from the United Societies in Dublin, sixpence from each man, and that there was to be collected that evening from the various societies, 10,000 sixpences; and he farther informed them (for he was an active man at that meeting) that there was to be a great funeral, that of one Ryan, a mill-wright, whose corpse lay at Pimlico, which was to be attended by all the societies in Dublin; that after the funeral, that particular society was again to assemble at the same place, Coghran's.

Gentlemen, O'Brien did, according to the directions he received, attend the funeral of Ryan at Pimlico, and at the funeral the prisoner was most particularly alert and active, and marshalled the persons who attended it. The witness will inform you of their numbers; they appeared to him so great, that he (to use his own expression) never before saw the like: he attended the funeral through several streets, but appre-

hending, that an attack would be made by the military to disperse them, he took the first opportunity to retreat. In the evening he attended, he returned to Coghran's; he had in the mean time seen his wife, and procured sixpence from her, and paid it upon the table, upon which he saw considerable sums, gold and silver, and bank-notes: he saw other members bring money from the other societies, and the prisoner was particularly active in collecting the money and in guiding the business of the meeting.

At this meeting, it will appear, that the prisoner openly read an account of arms and money and men, that were provided by the societies, and he then informed the society, that the French were to land in Ireland, and were to be joined, or aided by the societies, and some other particulars, too minute to mention; and the meeting adjourned to the 7th of May, to assemble at Tuite's, the Sheaf of Wheat, in Thomas-street, and the pass-word was to be "*Captain Flail*." O'Brien went to Tuite's on the 7th of May, and was admitted on giving the pass-word; and there, he will inform you, he found the prisoner acting as secretary. There were present sixty persons; their number was so great, that according to the policy of their institution, they determined to divide themselves into five splits, and they elected treasurers and secretaries for each, the prisoner administered what I may call an oath of office to the persons so elected treasurers and secretaries.

At this particular meeting, you will find the prisoner particularly active—here at his desire four members then present were appointed to examine three particular places contiguous to the ordnance stores, and to see whether they were places from which an attack might successfully be made upon the stores; this meeting adjourned to the ensuing Sunday (for Sundays are the days chosen to carry on this blessed work).—That particular split of which O'Brien was a member appointed to meet at Halfpenny's in New-market, and there that split did meet accordingly upon the 14th of May. At that meeting reports were made by several members, that they had reviewed the three places contiguous to the arsenals, pointed out at the meeting at Tuite's, and that they found them proper places for making the intended attack; and from that meeting that particular split adjourned to meet at the house of one Archbold in Skinner's-alley. There they were to meet the ensuing Sunday, the 21st of May. Accordingly they did meet upon that day, and there Finney was present; Halfpenny, who was one of the officers of this particular split, read a state of the forces and arms. And upon the next day 22nd of May, O'Brien the secretary of his split (and thereby privileged to attend the Baronial meeting) was introduced by Finney, and did attend the Baronial meeting in King-street. At this Baronial meeting there did attend forty-four members,

delegated from the various societies, within the barony or district to which that committee belonged. There O'Brien was brought, and introduced by Finney, they having given the pass-word, which was "*Mr. Herring*."—There he was sworn into office; and there the secretaries from the various societies did deliver in verbally, an account or statement of their societies and of their numbers, and Finney made an entry or memorandum of the several reports thus made by the officers of the sub-societies to that meeting, and to this Baronial committee sums of money were brought, and delivered to the prisoner and a person named Fox. Much conversation passed at this meeting. It will appear, as applicable to two of the overt acts, that Finney did declare the purpose for which the money was collected: he did state that four persons had been sent into France from the society of United Irishmen, for the purpose of inviting the French to invade this kingdom; that two of these persons had returned, that the remaining two had continued in France, in order to attend the French when they should invade this country, and that the money was collected for the purpose of paying the expenses of those agents, thus stated by him to have been sent into France; and to maintain the persons, who should desert from the king's troops, and the members of the society imprisoned under charges of having committed offences against the laws; he did assure the persons surrounding him, very solemnly, of the truth of his statement, and in order to procure farther credit to a statement so important, he called upon Fox to make oath of the truth of it, and Fox did thereupon swear to the truth of what Finney had informed them, that emissaries had gone to France, and that the French were to invade this kingdom, and that he had this account from another, who swore to its truth; and farther, with a view to the attainment of this object, he did state, that two vessels had arrived from France with arms, to arm the people, members of these societies.

Gentlemen, I have stated, that the Baronial meetings are inferior to the County meetings. It will appear that at this meeting, the members present were informed, that they would not meet upon the next Monday, which I suppose was generally the day appointed for the Baronial meeting, for that a county meeting was to be had upon that day, and therefore the Baronial meeting must stand over to Tuesday. Accordingly they agreed to meet at the house of Mrs. White, in Meath-street, and the pass-word was "*Mr. Patrick*."—The particulars of that meeting will come better from the mouth of the witness. It will appear that some inquiry was made, respecting the place of being supplied with *constitutions*, and other papers. Places were mentioned where to apply, and a person of the name of Jackson, a founder in Church-street, was mentioned, as being furnished with abun-

dance of them, and that they would be delivered there to persons qualified to receive them. It will appear, that a proposition was made at this meeting, and debated, for assassinating all persons who should give information against members of these societies.

However, before this meeting broke up, a peace-officer, who had information, through the means of O'Brien, of the meeting at this place, came for the purpose of apprehending the conspirators there assembled. O'Brien had communicated the pass-word to the magistrate. The woman of the house, or the waiters, perceived the approach of the officer, and those by whom he was attended, and a suspicion was entertained of the intention to arrest the persons assembled. The waiter came into the room, and said there were strangers about the place, and cautioned them to take care of themselves.—Finney called upon the other members to deliver their papers to him, which they accordingly did, and he left the room before the officer entered, and he had the good fortune to escape with the papers. The peace-officer and major Sirr, town-major, arrived immediately after, and found every thing according to the information which O'Brien had given. They arrested the persons there assembled; Finney had escaped; but that escape has, contrary to what he expected, tended only fully to confirm the account given by O'Brien. In a day or two after, Finney appeared in a public-house, in which were two soldiers; one, a corporal of the Kildare militia, of the name of Thompson, the other of the name of Clarke. One of these persons only survives; he will give you an account that, in their presence, Finney boasted of his cleverness, or good fortune in escaping from the meeting, at which his companions were arrested, and that he carried off the papers. One of these men, Thompson, immediately went to the picquet guard, and brought them to the house where Finney was, and had him arrested; thus, from Finney's mouth the whole evidence which had been given by O'Brien was confirmed. Finney was arrested in the month of May last: that he has not been tried before is not to be imputed to the crown; we were ready to try him, but he postponed his trial from time to time; but I will say no more upon that subject.

We will produce O'Brien, major Sirr, lord Portarlington, and Clarke the soldier of the Kildare militia. We cannot produce corporal Thompson; he made his examination of the facts I have stated: he cannot give evidence of facts; for he has been since assassinated.—Such, briefly, is the evidence that will be offered to you. You have an awful and a sacred duty to discharge. Yours is the duty which will decide upon that man's life, and the Court is engaged in the same duty in another respect. We, even we, who are in this humble station, I mean the counsel for and against the prisoner, are engaged in some degree in the discharge of the same duty. It is our

duty for the crown to lay the case fairly and clearly before you. It is the duty of the counsel for the prisoner to see that the man charged with this atrocious crime shall have a fair trial, and if he be innocent, that his innocence may be made apparent. It is not our duty or desire to have innocent men found guilty; and I am confident it is neither the duty, nor the wish of the counsel for the prisoner, if he be guilty, that he should escape. The counsel for the prisoner surely must have the same wish with ourselves, that for the safety of the state, the guilty shall be found guilty; and for the sake of the prisoner, if innocent, that he should escape. It is as far from them to wish that the guilty should escape, as it is from us that the innocent should be found guilty.

You, gentlemen, have, I say, a sacred duty to discharge; you will not be led from the faithful discharge of that duty, either by an abhorrence of the crime, or a tenderness to the criminal. You will do your duty to the state and to the prisoner. It is of the last consequence to the kingdom and to every individual protected by the laws, that a crime of this nature should not go unpunished; your hearts will inform you, that the enormity of the crime ought not to affect your minds in considering the prisoner's guilt. We will call our witnesses, and it must be a satisfaction to every mind to feel, that cool and impartial justice will be administered between the crown and the prisoner upon this important occasion.

James O'Brien sworn.

Do you recollect the 25th of April last?—I do.

Do you recollect being in Thomas-street?—I do: passing through on the 25th of April, I met a man of the name of Hyland at the door of one Blake, a publican.

Did any thing pass, and what, between you and Hyland?—I had a slight knowledge with him three months before through friends from the same place: he asked me did I hear from the country?—

Was there any person present or in hearing at the time Hyland spoke to you?—There was.

Do you know a person of the name of Patrick Finney?—I do; I knew him that day, and since.

Look about, and say if you see him?—That is the man [pointing to the prisoner].

Point him out to the jury?—That is the man; he knows me well.

He was present and within hearing, when Hyland spoke to you?—He was.

What did Hyland say?—He made signs which I came afterwards to understand.

What did he say, after he made the signs?—“It is a wonder you are not *Up*, James!”

Was that in the hearing of Finney?—It was.

What passed, or was any observation made by any person upon that?—There was.

What was it?—I asked him the sense of being *Up*, for I did not understand it.

What was said then?—Finney immediately told me, the sense was, to become a United Irishman, or if not I might lose my life before I went half a street.

Was there any proposal, and what, then made to you?—I told him, I did not understand him; he told me to go into the house, Blake's, and I should know the particulars.

Did you go in?—I did.

Was there any body but Finney in the room into which you went?—There was; there were ten when I went in. There were two men; I have since come to learn their names.

What happened towards yourself after you went into the room?—A man of the name of Buckley asked Finney, “Have you caught a bird?” “Yes,” said Finney. Then said Buckley, “He shall never leave this, till I make a Christian of him.” Then said he, “Do you, Lewis, mind that door, and I will mind this.”

What passed then? was any oath administered?—There was.

By whom?—Hyland told me, that I should take an oath, not to discover any thing that passed, or to give evidence against any one there, and then I would be farther *enlightened*.

Was there any oath administered by the prisoner?—There was afterwards.

Who swore you first to secrecy?—Hyland did.

Was there any other oath administered?—There was.

By whom?—Hyland laid the book upon the table, and said, turning to Finney, “I cannot repeat the *test oath* off; if not, you have a printed one about you.” Finney then drew out a printed paper, and Hyland said, “Do you repeat after me,” and I was sworn.

Can you tell the purport of that oath?—As nearly as I recollect, I will tell it.

Do so.—The purport of the oath to which he swore me, as well as I can recollect, was, “That I should persevere to endeavour to form a brotherhood of affection among Irishmen of every religious persuasion, and persevere to endeavour to gain a full, equal, and adequate representation of all the people in Ireland.”

Was there any more?—There was: “That neither fears, hopes, rewards, or punishments, should ever induce me, directly or indirectly, to discover on, or give any evidence against him, them, or any other similar societies, for any act or expression of their's, done or made collectively, or individually, either in or out of this society.” That, I believe, finished it.

After this, did you get any information with regard to the signs?—I was told by the prisoner after the oath, that every person, whether poor or rich, that was not a United Irishman, would lose their lives.

Pray now, O'Brien, what was it induced you, or did you take that oath voluntarily, or from apprehension?—He learned me the signs, that I might make myself known.

Did you take the oath voluntarily, or from fear?—I did it from fear of the words he said, when he was joined by every one in the room, and they had got, one to one door, and another to another. Yourself might be afraid, if you were there.

Did you pay any money there?—I did.

To whom?—I paid a shilling to the prisoner; he said, that was the rule for every man sworn, to subsist the cause.

Were there other meetings appointed?—There were; after Finney catechised me in the signs and words; I shall mention them if you choose: He told, the challenge was, to draw the right hand across the left breast, and the answer was to put the left hand upon the right wrist; then two words were spoken, "Go on;" and the answer by the opposite person was, "To what?" The person replied, "to truth, union, and liberty." Then the right hand was offered by one person, and the left given by the other, then they shook hands.

After this, was there any day appointed for a future meeting?—He said we should meet to be farther enlightened in the business, at the widow Coghnan's, 47, Newmarket on the Coombe, corner of Fordam's-alley.

Pray did you get any token, or word, by which to get admission?—He told me to go at six or seven in the evening, and to ask, "Is Mr. Green here?" and I would be admitted to the United Irishmen, or brothers, who were there.

Was there any conversation about their strength, number, or arms?—There was, at Blake's, in Thomas-street.

When you were sworn?—There was a printed paper, the sense of which was, that all place-men and pensioners, not United Irishmen, were to lose their lives.

After this had passed, what did you do on that day?—After it had passed, I went home to my own place first; and I could recollect, through my recollection and understanding, to hear of people being taken as "Defenders," and in that line; and I immediately set my opinion, that I had better discover what had happened to me.

Did you discover?—I did.

To whom?—To captain Higgins, a magistrate, who is acquainted with me.

What country gentleman is he?—Queen's county, from Mount Mellick. I went to him at Mr. Prendergast's, where he was; I do not know what street, but one end leads into Golden-lane.

Court.—What countryman are you?—Queen's county.

What did Mr. Higgins advise you to do?—When I apprized him of the speeches—

Mr. M^r. Nally.—Was Mr. Finney present?—No.

Where did Mr. Higgins bring you?—He brought me to lord Portarlington.

Were you brought any where afterwards?—I was not brought any where; I walked voluntarily.

Where did you go to?—We went to lord Portarlington's house, and he went with us to the parliament house, where I told what had passed.

Court.—What do you mean by telling what passed?—I told him what had happened at Thomas-street, my being sworn in, and the declarations that were made of the place-men losing their property, if they were not United Irishmen.

You enlisted in some regiment of dragoons afterwards?—I did, in the 9th regiment of dragoons, for my own protection.

With what colonel?—Colonel Henniker.

How soon after you were sworn?—The day after, because I did not know what to do: I recollected Hanlon's* having given information against some persons, and that he went into the artillery, who protected him; and I determined in my own breast to enlist, and that I would have the protection of the regiment.

You talked of an appointment for the Sunday after?—There was: I made known at the parliament house something of the funeral and the great meeting, and was asked, whether there was any thing in the coffin? I said I could not tell.

[This examination was objected to by the counsel for the prisoner.]

Did you go any where upon the Sunday after?—I did.

Where?—To Coghnan's, New-market upon the Coombe.

Mr. Curran.—I do not know that the learned counsel is aware that New-market is in the county of Dublin: I understand that the entire market is in the county of Dublin. This indictment is in the city, and it needs not any information or assertion from me to satisfy you, that until an overt act be proved in the city, you can give no evidence of what passed in the county.

Mr. Prime Serjeant.—Then I will postpone for the present what passed in the county.

You gave me an account of Thomas-street. Do you know the Sheaf of Wheat?—I was there the Sunday after I was at New-market, Sunday the 11th of May.

Was any word given to introduce you there? "Mr. Flail" was the word.

Now tell me what passed there.—I got in upon the word "Mr. Flail."

Did you see the prisoner at the bar at that meeting?—I did see him at the meeting, and when the meeting closed.

Were there many persons there?—There were sixty men in the room.

Court.—Whose house was it?—Tuite's.

Mr. Curran.—I wish Mr. Prime Serjeant to mention the particular overt act to which he applies this evidence.

Mr. Prime Serjeant.—That must be done

* See the trial of Glennan and others, *ant*, p. 457.

by those who speak to evidence, or by the Court. I produce the witness to prove every individual overt act in the indictment; and if the statement be founded, he will certainly prove them.

Mr. Curran.—There are thirteen overt acts in the indictment. After the last objection I made, the Court will see with what view I interfere now, and how necessary it is we should know what act this witness comes to prove.

Mr. Prime Serjeant.—I declare, that from the informations I have of this man, he will prove them all. It will be for the Court and the Jury to apply the evidence.—Was the number of the persons counted?—I counted them.

Did any body else?—Finney and Tom Cooke, a yeoman, who is not here.

Was any thing said upon that?—It was advised between them both, that there being too many, they should be divided into splits.

Court.—Who proposed it?—Finney, as secretary of the meeting; and Cooke, as chairman, or president.

Do you say that Finney was secretary of the meeting?—He was secretary, my lord.

You said they were divided?—There was a sheet of paper got in, and No. 1, to 60, put in it, and it was cut up in pieces, and thrown into a hat, and every one drew, and each man was to follow the split of 12 that he was to draw.

What number did you draw?—I drew 38.

Court.—I suppose there were 60 tickets put into the hat?—There were; that was to determine what split a man should belong to; he was to fall into whatever 12 he should draw.

Was there any officer elected for each split?—There was: there was a room hard by, into which every twelve went, until they elected a secretary and cash-keeper, which left ten members.

Court.—Did they go into the room?—I went in with my own split.

Did they go in, in the order of their numbers?—I do not know of any but my own split; I cannot tell what passed while others were there.

Did you elect a secretary and cash-keeper?—We did.

What was done after that?—We came into the large room all together.

The whole sixty?—Yes.

What happened there?—The secretaries that were elected were ordered to attend their meetings, and have candle-light near the door that if a stranger came, they might know him, lest any one should impose upon the meeting.

After the election of secretaries, and cash-keepers was there any oath administered, and by whom?—The five secretaries and five cash-keepers were ordered to sit near the chair, by the prisoner.—The five secretaries were sworn to the secretary's oath, and the five cash-keepers to the treasurer's oath.

Court.—By whom?—By Finney and Cooke,

who afterwards raised a glass of punch and said, "Wash it down with this."

Can you tell the oath?—I believe I can, a part of both:—"That as long as he held the office of secretary he would not give any papers, copies, or documents to any man not part of the split.

What was the oath of the cash-keeper?—"That he should not embezzle or put astray any of the cash given him in charge, but to make a just return to the Baronial Meeting."

After all this had passed, swearing and washing down, do you recollect any conversation about White's-court?—I do very well.

What was it? Tell the Court and Jury?—Cook struck the table with a carpenter's rule he had, and called to order, every man to keep silence. When every man kept silence, "Gentlemen," said he, "I have one thing to disclose, with your leave," turning to Finney, Finney said, "There was time enough," so Cook said, "It must be disclosed now; you must all go," said he, "as you know your respective times of meeting, to White's-court in Ship-street, to No. 48, George's-street, and the Stone-cutter's yard in the same street, round from Stephen's-street."

Was it told for what purpose?—The business was introduced in the purpose of viewing these places, to see how they could get into the back of the ordnance stores, to rob it of arms and stores, ball and powder, without loss of blood, as they did not like to face the guards.

Who said this?—Both Finney and Cooke.

Was there any objection made to that proposal?—None that I heard.

Was it agreed to?—Every man was asked to put out his hand, which he did.

Was it appointed, that you should meet again?—The secretary and cash-keeper of the split I was allotted in, said, we were to meet at Halfpenny's, at Newmarket on the Coombe.

For what time?—The Sunday after.

Court.—What was his christian name?—Ignatius: he was our secretary.

Secretary of your split?—Yes, my lord.

You met them?—I went to Halfpenny's the Sunday after, and I would not be let in without the word.

Court.—Was there any signal?—The password was "Did the Woolpack pass by," they being mostly broad weavers.

Mr. Curran.—Are you going to give evidence of what passed at Halfpenny's?

Mr. Prime Serjeant.—I am.

Mr. Curran.—My lords, as to the law there is not the least doubt. It is clearly settled, that unless an overt act be proved in the county where the indictment is laid, the prosecutor cannot go into evidence in a foreign county. There can be no doubt of that:—we have the books in court, and can read passages to that effect. The only doubt is with regard to the application of the rule here. I am to contend, that there is not evidence for a jury of any overt act of high treason in the

city. There cannot be evidence of an overt act, unless the evidence, if believed, would be sufficient to convict. What is the evidence here?—He has stated a meeting and a proposal to see whether there might not be a robbery committed upon his majesty's stores without bloodshed, and without opposing his majesty's forces.

Mr. Justice *Chamberlain*.—We will give an opinion, if forced to it; but after the statement of the counsel for the crown, they can be under no difficulty in going farther, and postpone this part for the present.

Mr. *Solicitor General*.—In lord Preston's case, the only act proved was taking boat at Surrey stairs, and that let in evidence of what passed in *Middlesex*.*

Mr. Baron *Smith*.—We have so much in prospect that the less time there is wasted in argument the better.

Mr. *Prime Serjeant*.—I shall go to another overtact. Do you recollect being at Skinner's alley, at one Archbold's?—I do very well, the Sunday after.

[Here it was objected that Skinner's-alley was also in the county.]

Do you know North King-street?—I was there.

Was Finney there?—He was the man brought me there.

Do you recollect how soon after you left Archbold's?—It was the Monday evening following. He scolded the secretary and cash-keeper there for admitting me, without administering an oath to me upon my election.

Was any account returned?—There was. Finney swore me to the cash-keeper's oath, and one Hyland to the secretary's.

Tell what was done?—After I was sworn, every secretary and cash-keeper should answer according to their number, beginning at 21. The secretary was asked the number of men; and Finney made an entry in the book of the cash and the numbers, and when a member swore in a man, he was to give an account of what he belonged to, and the number of men—

Court.—What number of men?—The number of men that each secretary and cash-keeper had under them, for this was a Baronial meeting.

This was a Baronial meeting?—It was, of secretaries and cash-keepers.

There was an account given of each, and the number of men?—There was, and of arms.

Who received the cash at the meeting?—Finney did.

Was there any and what conversation, with regard to the purpose for which the money was received, and by whom?—There was.

By whom, and what was it?—There were forty-five men in the room, secretaries and cash-keepers, every two men answering one

number: Finney was asked the purpose to which the cash was to be applied; he answered to pay the men as they had done before, to go to France.

For what purpose?—For the purpose of letting the men in France know the state of the men in Ireland, and of their intention to join them at their landing.

Court.—There was a return of men and arms, did you say at that Baronial meeting?—There was a return of cash by each cash-keeper, which was paid over to Finney, and there was a return of men and arms.

What farther did he say about the persons being sent into France?—He told me that he got information that day (he told the whole meeting as well as me) that two of the four, who were last sent into France, had come back, and that the French would certainly come again, and that the other two remained to come with the fleet.

Was there any County meeting mentioned that day?—There was.

Who mentioned it?—Finney did: he told us, they could not meet on the Monday, but might on Tuesday, as he was obliged to attend a county meeting.

Court.—Were the Baronial meetings on Monday?—The one I sat in was upon Mondays, another met upon Tuesdays.

Was there one Fox at that meeting?—There was.

Did he say any thing in the presence of Finney?—Finney had mentioned the use of the money, for deserters, and persons in gaol, and the return of the two persons from France, and then he called upon Fox, and asked him, if it was not true. Fox took a book out of his pocket, and swore it was true, as it was sworn to him by another man the same day.

Was there any farther meeting appointed?—There was.

For what day and place?—Tuesday eight days.

What place?—Mrs. White's, 44, Meath-street, and the pass-word was to be, "*Is Mr. Patrick here.*" She kept the sign of St. Patrick, and it was thought the members would not forget the word, when they looked at the sign.

Do you recollect any thing else to have been said by Fox in the hearing of Finney?—That every person wanting constitutions or returns was to call at Fox's place, 18, or 19, Hammond-lane, and he would supply them.

Did you ever call upon Fox in consequence of that?—I did.

Tell what passed?—I went up stairs to where he lived: he brought me to a back-yard and in a hole in the wall he took out papers, which he showed me, that I might give a copy of it.

Mr. *M^cNally*.—I hope the counsel for the crown do not mean to give parol evidence of these papers.

Witness.—I took the paper and had it till Cook took it from me.

* See Vol. 12, p. 727.

He gave you a return and a constitution?—He gave me a return, and the constitution was somewhat blotted, and I asked for another; he said he had not another till we should go to Jackson's in Church-street. We went there, and saw a tall man in brown clothes with a black sallow complexion. He gave Fox twelve, and he gave me one.

Court.—What do you call a constitution?—A book having the test oath, and the secretary's oath, and the cash-keeper's, and the rules of the society.

Mr. Prime Serjeant.—My lords, I now go back to the county of Dublin, and hope the intimation from the Court will have the effect intended.

Mr. Justice Chamberlain.—Have the counsel for the prisoner any objection to their going to this evidence?

Mr. Curran.—I have, my lords, and wish to know, whether the witness has done as to the parts he has testified; that he may not, after my objection, supply any thing by saying he omitted any expression, which he forgot.

Mr. Justice Chamberlain.—We do not give any opinion upon the law now; but we wish for the sake of perspicuity, that you would finish in the city.

Mr. Prime Serjeant.—I have no objection to accommodate the Court; but it may be drawn into example hereafter.

Mr. Justice Chamberlain.—You must then support your objection, Mr. Curran.

Mr. Curran.—My lords, there is no doubt as to the law, that an overt act must be established in the county where the indictment is found, before evidence of an overt act in a foreign county can be received. I take it to be clear law, that some overt act must be clearly proved, if the evidence be credible, in the proper county, such as would completely establish an overt act in the indictment. See what the evidence is:—the only overt act to which the evidence can apply, is that of levying money to send persons into France to invite the French to invade this country. There is evidence of an overt act of a different kind. I admit it is an overt act of treason to give material information to an enemy at war. There is no occasion to cite cases:—Hensey's case* is directly in point. Preston's case is in point. Therefore my objection is this, that the evidence given is evidence of a distinct kind of overt act, an established overt act of treason, clearly known to the law. The overt act in this indictment is, that the prisoner levied money to send messengers to France to invite them to invade this country; the evidence is not that, but that messengers *had been sent* in consequence of a previous determination on the part of France to invade this country; alluding to the notorious event of their coming to Bantry Bay.

Mr. Prime Serjeant.—Do your lordships think it necessary for me to say a word?

Mr. Justice Chamberlain.—We are of opinion, that there is evidence to go to the jury, and unless there be no evidence Mr. Curran himself admits that his objection fails to the ground. We think there is evidence of the several overt acts, and particularly of the first, that the prisoner associated with others under the denomination of United Irishmen, with design and for the purpose of aiding and assisting the persons exercising the powers of government in France, in case they should invade this kingdom. Now we think there is evidence, if credited, to support that. Here are oaths proposed—a society is formed; clearly, the purpose of this society is enquirable into, and the same witness discovers at subsequent meetings, that they had sent persons into France to inform the French of the state and number of persons inclined to assist them, and ready to join them. Is not this evidence to go to a jury to show the purpose of this association, if the jury believe it? Then there is evidence in the city of Dublin of a plan to attack the ordnance stores. Is it not for the jury to inquire for what purpose that attack was to be made, and may it not be coupled with the expressions of the prisoner, that persons had been sent into France and some of them had returned? The jury coupling the forming of the association with the plan to attack the Ordnance, are to see, whether all this was done for the purpose laid in the indictment, of adhering to and assisting the French, if they should land. I do not say, what the jury will intend upon this evidence; but I think they may intend, that these proceedings were for the purpose of assisting the French.

Mr. Baron Smith.—It is sufficient for me to say, that I entirely concur in the opinion delivered by Mr. Justice Chamberlain.

You told me, that you got into Coghlan's by the word "*Mr. Green.*" Where is Coghlan's?—No. 47, New-market on the Coombe.

You got in by the word "*Mr. Green?*"—I did, by asking "*Is Mr. Green here?*"

Was the prisoner there?—He was.

Court.—This was the Sunday after you were sworn?—It was Sunday the 25th of April.

You were admitted?—I was admitted up stairs, and Finney introduced me to the men there as a true man and a brother, that he had sworn me himself.

What happened there?—He asked me for sixpence; I told him, I had it not; he told me to go to Pimlico that evening, and that 10,000 United Irishmen were to walk after the funeral of Michael Ryan, and that every man of them was to pay sixpence. They were to walk to show government their strength, and what they were.

Did you go to that funeral?—I went home first, and procured some money, and then went to the funeral; I walked as far as the Castle-gate, and the guard being coming, I was afraid I might be killed as much as any man

* *Ante*, Vol. 19, p. 1341.

that deserved it; for I was all that time giving information.

Was the prisoner there?—He was; he was making us walk four deep; and afterwards he was making us walk six deep.

Court.—You walked four deep?—We did, four in a breast.

Who made you walk that way?—Finney; and after he saw the crowd too throng and he made us walk six deep.

You went home?—I did, and got some money, and went to Coghnan's, and got in upon the word, after the corpse was interred. Finney introduced me as before; that I was a true man and a brother, for he had sworn me himself. Then he demanded sixpence from me, as every man at the funeral had paid sixpence for the good of the cause.

Did you see any more money there but that sixpence?—Undoubtedly I did, both gold and brass, and paper; men were coming in and paying it, and he received it.

Court.—You saw notes and money?—Notes and money, my lord.

Received by him?—Yes, brought in by different people and received by him.

Did he read any thing at that meeting?—He did.

What was it?—He read the constitution, the strength of men and arms in Ireland; I cannot recollect the strength of arms, but he told me there was 111,000 men in the province of Ulster.

Court.—You do not recollect the arms?—I do not; but he said there were two ships arrived with arms and ammunition from France.

Was there any meeting appointed for a future day?—There was.

Where?—Tuitt's in in Thomas-street.

Was there any pass word?—There was, "*Mr. Flail.*"

Was there any meeting at Halfpenny's?—There was.

At that meeting was Finney present?—He was not.

You recollect what passed about examining White's-court and George's-street; what was to be done afterwards?—We were to see how it might be easy to get in without blood. What opinion we formed, we were to communicate to the officers of each split, that they might report it to the Baronial Committee, and that they should report to the National Committee.

Did you report it accordingly?—We did, and every one of the old split gave their opinion, that it was a very good act, and could easily be done, except five new members that came in.

Was there any other meeting appointed for any other place?—There was.

Where?—At Archbold's in Skinner's-alley, the pass word was to be "*Harp*," because Halfpenny had a harpsichord in the parlour, where he swore the five men, and played some tunes upon it; therefore the pass-word was agreed to be "*The Harp.*"

What happened there?—There were seven new members sworn, which made us twenty-four, and obliged us to have a split that day.

Did you get any place in that split?—I did.

What place?—I was voted cash-keeper of that split: I was only elected there, and was sworn in at North King-street, at the Baronial Meeting. I told you that Finney had scolded Halfpenny for letting me come to the Baronial Meeting without being sworn.

Was there any benefit annexed to the office of secretary or cash-keeper?—They had.

What was it?—No other could go to the Baronial Meeting but secretaries and cash-keepers.

Did you go there to be sworn in?—No; I did not know that I would be sworn, but several of us went, and Finney, who was in a great coat.

Jury.—Was Finney present?—He brought me from Archbold's to North King-street.

You recollect you said there was a meeting appointed at Meath-street, and the pass-word agreed upon was, "*Mr. Patrick?*"—I do: it was agreed the meeting should not be till the Tuesday eight days following.

You went to that meeting?—I did on the Tuesday eight days following.

How did you get in?—There were two men on the stairs, and they both saw whether I was catechised, to see whether I knew the signs, although I had the pass-word, "*Is Mr. Patrick here?*"

Was Finney there?—He was.

Was Cooke there?—He was.

Was there any debate?—There was: Finney said as soon as they should all come in they should be sworn not to make use of the christian names of one another, lest it might lead to a discovery.

Was there any thing said, with regard to persons who should give information?—There was.

What was it?—Cooke said, that any man, who was only to be censured for giving information to government, should have his eyes plucked out, his hands cut off, and his tongue cut out.

Court.—What do you mean by *censured*?—To suppose they were giving information against the party.

His hands were to be cut off?—They were, the way he could not write; and those who gave evidence for government were to be murdered.

Do you recollect any woman going into the room?—No; but I recollect she sent her man in.

What did he say?—The man said his mistress had been looking out of the window, and saw people watching about the house and desired us to take care. Finney immediately desired every one to give up the papers: he got them all, put them into his bosom, and he and another went across the table, and got down stairs.

Did any body come in, or were any taken?—Every one of us were taken: sixteen.

Who came in?—Some gentlemen and guards.

Tell the people who were taken?—There was Cooke, Halfpenny, Hartford, M'Cue, Molony, Flinn; I do not immediately recollect any more of them.

Do you recollect who came in with the guards?—I do.

Who?—Major Sirr and captain Atkinson. Had you given any information to them?—Not to Atkinson, but I had to major Sirr, and some other gentlemen.

You recollect the meeting at Meath-street?—I do.

Was there any report?—There was.

By whom?—By Finney; that there should be no explosion among the United Irishmen until such time as the French should come either to England or Ireland, but they should continue to swear in as many as they could, and secrete all the arms and ammunition they should get.

Cross-examined.

Pray, Mr. O'Brien, whence came you?—Speak in a way I will understand you.

Do you not understand me?—Whence? I am here. Do you mean the place I came from?

By your oath, do you not understand it?—I partly *censure* it now.

Now that you partly *censure* the question, answer it. Where did you come from?—From the Castle.

Do you live there?—I do while I am there.

You are welcome, Sir, to practise your wit upon me. Where did you live before you came to Dublin?—In the Queen's county.

What way of life were you engaged in before you came to Dublin?—I had a farm of land, which my father left me, and I set it, and afterwards sold it and came to Dublin to follow business I learned before my father's death: I served four years to Mr. Latouche of Marley.

To what business?—A gardener.

Were you an excise officer?—No.

Nor ever acted as one?—I do not doubt but I may have gone of messages for one.

Who was that?—A man of the name of Fitzpatrick.

He is an excise-officer?—So I understand.

What messages did you go for him?—For money, when he was lying on a sick bed.

To whom?—To several of the people in his walk.

But you never pretended to be an officer yourself?—As I have been walking with him, and had clean clothes on me, he might have said to the persons he met, that I was an excise-officer.

But did you ever pretend to be an officer?—I never did pretend to be an officer.

Did you ever pass yourself for a revenue-officer?—I answered that before.

I do not want to give you any unnecessary trouble, sir; treat me with the same respect I shall treat you. I ask you again, did you ever pass yourself for a revenue-officer?—Never, barring when I was in drink and the like.

Then, when you have been drunk, you have passed for a revenue-officer?—I do not know what I have done when I was drunk.

Did you at any time, drunk or sober, pass yourself as a revenue officer?—Never, when sober.

Did you, drunk, or sober?—I cannot say what I did when I was drunk.

Can you form a belief? I ask you upon your oath: you are upon a solemn occasion: did you pass yourself for a revenue officer?—I cannot say what happened to me when I was drunk.

What? Do you say you might have done it when you were drunk?—I cannot recollect what passed in my drink.

Are you in the habit of being drunk?—Not now, but some time back I was.

Very fond of drink?—Very fond of drink.

Do you remember to whom you passed yourself for a revenue-officer?—I do not.

Do you know the man who keeps the Red Cow, of the name of Cavanagh?—Where does he live?

Do you not know yourself?—There is one Red Cow above the Fox and Geese.

Did you ever pass yourself as a revenue officer there?—I never was there but with Fitzpatrick; and one day, there had been a scuffle, and he abused Fitzpatrick and threatened him; I drank some whiskey there, and paid for it, and went to Fitzpatrick and told him, and I summoned Cavanagh.

For selling spirits without licence?—I did, and compromised the business.

By taking money, and not prosecuting him?—Yes.

Did you put money into your own pocket by that?—I did.

But you swear you never passed yourself for a revenue officer?—Barring when I was drunk.

Were you drunk when you summoned Cavanagh?—No.

When you did not prosecute him?—No.

When you put his money into your pocket?—No.

Do you know a man of the name of Patrick Lamb?—I do not; but if you brighten my memory I may recollect.

Did you ever tell any man, that you were a supernumerary, and that your walk was Rathfarnham and Tallagh?—I never did, except when I was drunk. But I never did any thing but what was honest, when I was sober.

Do you believe you did say it?—I do not know what I might have said when I was drunk. You know when a man is walking with an exciseman, he gets a glass at every house.

Mr. Curran.—I know no such thing, never having walked with an excise-man.

Witness.—Then you may know it.

Do you know any man passing by the name, or called Patrick Lamb?—Not that I recollect upon my word.

Upon your oath?—I do not recollect, I mean to tell every thing against myself, as against any other.

Do you know a person of the name of Margaret Moore?—Where does she live? is she married?

She lives near Stradbally; do you know her?—I know her well; I thought it might be another; I was courting a woman of that name, before my marriage.

Did you come to Dublin before her, or after?—I was in Dublin before I knew her.

Did you ever get a decree against her?—I did get a summons for money she owed me.

Were you taken to the Court of Conscience by her?—No.

Never?—Never.

Did she pay you the money since?—No. My brother and sister run a bill with her, and my brother gave a note, he being under age; and afterwards I took a house in Stradbally and did not like making a noise before the neighbours, and paid her nine guineas.

Was there any money refunded her by order of the Court?—I do not know; she lodged money for her security in the house where she lay, as a security for her return the next day.

Were you summoned?—No.

Nor paid any money?—No.

Did she pay any money to any person?—Don't I tell you she lodged money as a security till next day.

When you met Hyland, were you a United Irishman?—Always united to every honest man.

Were you a United Irishman?—Never sworn.

Were you in any manner a United Irishman before that day?—Never sworn in before that day.

Were you in any manner?—Don't I tell you, that I was united to every honest man.

Do you believe you are answering my question?—I do.

Were you ever in any society of United Irishmen before that day?—I do not at all know, but I may, but without my knowledge: they might be in the next box to me, or in the end of the seat with me, and I not know them.

Were you ever in a society of United Irishmen but that day?—I was since.

Were you ever of their meetings, or know any thing of their business before that day?—No; but I have heard of defender's business.

Were you of their society?—No; but when they came to my father's house, I went to admiral Cosby's, and kept guard there, and threatened to shoot any of them, that would

come: one Connelly told me, I was to be murdered for this expression.

Hyland made signs to you in the street?—He did.

Did you answer them?—No.

Why did you not?—Because I did not know how.

Then is your evidence this, that you went into the house in order to save your life?—I was told that I might lose my life, before I went half a street if I did not.

Then it was from the fear of being murdered before you should go half a street, that you went in to be a United Irishman?—You have often heard of men being murdered in the business.

Do you believe that?—I do; it is common through the country; I have read the proclamations upon it, and you may have done so too.

How soon after you were sworn, did you see the magistrate?—I was sworn upon the 25th, and upon the 28th I was brought to lord Portarlington, and in the interval of the two days Hyland was with me and dined with me.

Why did you not go the next day?—Because I did not get clear of them, and they might murder me.

Where did you sleep the first night after?—At my own place; I was very full, very drunk.

Did either of them sleep there?—No.

Where did you live?—In Kevin-street, among some friends good to the same cause.

Where did you see Hyland the next day?

—He came to me next morning before I was out of bed, and stayed all day and dined: we drank full in the evening.

What became of you the next day?—Hyland came early again, and stayed all day; I was after getting two guineas from my brother. I was determined to see it out, to know their conspiracies, after I was sworn.

Then you meant to give evidence?—I never went to a meeting, that I did not give an account of it.

Court.—To whom did you give information?—To colonel Henniker, lord Portarlington and Mr. Secretary Cooke in the Castle.

How soon after these meetings?—I gave information before I went to Newmarket on the Coomb, that I was to meet there.

I wish you would recollect yourself as to Mrs. Moore, did you not swear, that there was no re-hearing of a cause between you, before a magistrate?—You did not ask me that before.

I ask you now?—I believe there was between her and the bailiff.

You were not sworn?—I never swore an oath there. I was talking to a young man of the name of Kilbride.

Court.—What was the re-hearing about?—She had let my brother and sister run in debt, and he passed a note, and that

was hurting my credit in Stradbally, and I was obliged to take up the note.

You were not sworn?—I was not.

Did you get an order?—I got an immediate summons without being sworn. She put an immediate summons upon the pillars of the Tholsel, not knowing where I lived, and when we came before the magistrate, he tore them both.

Did you say she was arrested?—Indeed it was the bailiff humbugged me out of the money; I was not up to the tricks of Dublin at that time.

Was she arrested?—I believe she was, the bailiff told me so.

Do you know Charles Clarke of Blue-bell?—I have heard of such a man.

You do not know him?—I do: I do not mean to tell a lie.

You did not know him at first?—There are many men of the name of Clarke. I did not know, but it might be some other: it did not immediately come into my memory.

You thought it might be some other Clarke?—There is a Clarke came in to me Yesterday.

Did you ever get money from Clarke of Blue-bell, as an excise officer?—I got three and three-pence from him not to tell Fitzpatrick: he did not know me, and I bought spirits there, and seeing me walk with an exciseman; he was afraid I would tell of him, and he gave me three and three-pence.

And you put it into your pocket?—To be sure.

Did Mrs. Clarke give you any money?—Not that I recollect: I got three and three-pence between them; the husband gave me three and three-pence.

You said before he gave you three and three-pence; that is settled; did you get any afterwards from her?—No, I got it from them both. He struck her for giving me spirits, and then they disputed, and she gave him money to give me, and I got it from it from the husband.

Did you pass yourself as a revenue officer upon him?—No.

You swear that?—I do.

You know a man of the name of Edward Purcell?—That is the man that led me into every thing. He has figured among the United Irishmen. He got about 40*l.* of their money and went off; he has been wrote to several times.

How came you to know him?—Through the friendship of Fitzpatrick; he had Fitzpatrick's wife, as a body might say, having another man's wife.

He made you acquainted?—I saw him there and Fitzpatrick well contented.

Did he ever give you a receipt?—He did.

Was it for money?—No.

What was it?—It was partly an order, where Hyland, he and I hoped to be together: it was a pass-word that I gave him to go to Hyland to buy light gold that I knew was going to the country.

Did you ever give him any other receipt?—I do not know but I might; we had many dealings.

Had you many dealings in receipts?—In receipts.

I mean receipts to do a thing: as to make a pudding, &c. Did you give him receipts of that nature?—I do not know but I might give him receipts to do a great number of things.

To do a great number of things?—What are they?—Tell me the smallest hint, and I will tell the truth.

Upon that engagement, I will tell you? did you ever give him a receipt to turn silver into gold, or copper into silver?—Yes, for turning copper into silver.

You have kept your word?—I said, I would tell every thing against myself.

Do you consider that against yourself?—I tell you the truth; I gave him a receipt for making copper money like silver money.

What did you give it him for? Did he make use of it? Was it to protect his copper from being changed that you did it?—He was very officious to make things in a light easy way without much trouble, to make his bread light. But I did it more in fun than profit.

You did not care how much coin he made by it?—I did not care how much coin he made by it: he might put it upon the market cross.

Do you say, you do not care how many copper shillings he made?—I did not care whether he made use of it or not.

Upon your solemn oath you say, that you did not care how many base shillings he made in consequence of the receipt you gave him?—I did not care how many he told of it, or what he did with it.

Had you never seen it tried?—No, I never saw the recipe I gave him tried, but I saw others tried.

For making copper look like silver?—To be sure.

Do you recollect, whether you gave him half a crown upon which that recipe was tried?—I never saw it tried, but I gave him a bad half crown; I did not give it him in payment. I did it more to humbug him, than any thing else.

Were you never a seller of tea at Stradbally?—Never.

Any where?—No.

At the canal?—No.

Had you ever in your custody any quantity of tea?—Never but when I might buy it for my family, and bring it home.

You never bought a quantity of tea at the canal stores?—Never.

Did you demand any there?—No.

Nor send any person to demand any?—No: I do not know what you, are talking of at all.

Do you know of any tea that Fitzpatrick seized?—No.

Did you ever live at Power's in Thomas-street?—I did by day, but never at night.

Do you recollect tea being taken out of Power's house?—No I do not recollect its being taken; but I recollect to have heard of such a thing being done.

Were you ever charged with having that tea?—I went home the evening the tea was said to be taken, and was in bed, when at twelve o'clock at night, Master John Power and some watchmen came and took me out of bed. They searched the place.

Mr. *Solicitor General*.—How long since?—Twelve or fifteen months ago.

Mr. *Gurran*.—Is that your hand writing?—[showing a paper to the witness]. That is my hand-writing.

That is one of the receipts you gave Power?—I do not know; but I gave him many, I won't deny any thing.

Have you no recollection of any other that you gave him?—I may have given him others.

You have no recollection of them?—Unless you brighten my memory.

You have no recollection now of what any other receipt was. Do you swear that?—Indeed I have not, but as you may give me a small hint, it may come to me.

Recollect what you said. I ask you, have you no recollection of what any of them was?—I have not, barring you give me some small hint, and then I will tell it.

Do you know what became of that tea?—No.

Did you ever tell any one you did?—No.

Did you tell any body that you found any tea?—No.

Nor that you had lodged any at the canal?—No.

Do you know a man of the name of Patrick Brady?—No.

Or Michael Brady?—Not that I recollect.

Then you never told such a man, that you had taken the tea, or knew anything of it?—Never to my recollection. If I did, it was false.

Did you ever tell it, true or false, to any person, that you got half of it as an informer?—Never.

Do you know Mr. Roberts?—What Mr. Roberts?

Mr. Arthur Roberts of Stradbally?—I do.

Did you ever talk to any person about his giving a character of you?—He could not give a bad character of me.

Did you ever tell any person about his giving you a character?—I say now, in the hearing of the Court and the jury, that I heard of his being summoned against me, and unless he would forswear himself, he could not give me a bad character.

Did you ever say you would do any thing against him?—I said I would settle him, but do you know how? There was a matter about an auction, that I would tell of him.

Had you a weapon in your hand at the time?—I believe I had a sword.

And a pistol?—Yes.

And you had them in your hand at the time you made the declaration?—I knew he was a government man, and I would not do any thing to him in the way of assassination.

Do you know a man of the name of George Howell?—Thomas Cook knows him.

Do you know him?—Yes.

Did you pass yourself before him as a revenue officer?—I do not remember that I did. It might be the case through drink.

You must be very drunk when you did it?—I never did it when sober.

Did you ever apply at justice Wilson's office in New-street, for a summons as a revenue officer?—It is not in New-street at all.

Well, did you apply at his office?—It was at his office I got the summons for Cavanagh, and the justice desired me when the man was to appear, to bring the officer of the walk there.

But you did not pass yourself there as a revenue officer?—If I did Mr. Wilson would not desire me to have the officer of the walk there.

You said you never sold tea to any body?—Never.

Do you know a man of the name of Dunn?

—I know the wife of Matthew Dunn who keeps the Churn-inn in Thomas-street.

Mr. *Solicitor General*.—What you said about Roberts, you said publicly?—I made no secret of it; but I did not say it with a bad intent.

Jury.—Was Finney present, when the conversation was held about cutting off the hands, and putting out the eyes of persons suspected of informing government?—He was; and he said farther, which I forgot, but say now, that there should be a day appointed to bring such persons in, as they might not get out again.

John Atkinson sworn.

Did you ever see the last witness that was here?—I did.

Did you ever go to a public-house in Meath-street?—Yes.

What house?—The sign of St. Patrick.

Court.—What time?—The latter end of May.

What did you find there?—I found the witness there and several others.

Did you find a man of the name of Cook there?—I think so; there were sixteen in all.

How did you obtain admission there?—I was told the signal word was "*Is Mr. Patrick here?*" and upon mentioning that, I would be admitted.

Court.—Who informed you of that word?—I got it from colonel Alexander. I gave the word, and passed by two persons, seemingly centinels on the stair-case, who desired me to go forward.

You then got into the room?—I did.

Were the people sitting there?—They were sitting at a long table, one at each end, the rest along-side.

Had you any conversation with them?—No, I got a prayer-book in one of their pockets.

They did not tell you what they were about?—No, they seemed rather surprised.

Cross-examined.

You did not see the prisoner there?—No, I did not see him there at all.

Peter Clark sworn.

Do you recollect the 31st of May last?—I do.

Do you know Patrick Finney?—I do.

Look and try if you see him?—There he is.

Point him out?—That is he [pointing to the prisoner].

Do you recollect being in company with him any where?—In Thomas-street, at Tuite's house.

Was there any conversation?—There was. What was it?

Court.—Who else was in company?—Corporal Thompson of the Kildare militia, who was murdered near the Naul.

Mention the conversation?—When Thompson and I went into Tuite's to get a pot of drink, Finney was backward in the tap-room; when he saw us coming in, he called out "Kildare, how are you." I did not at first recollect him, but afterwards I did, that I saw him at Balbriggan, where the regiment lay. He asked me, how were all the boys; I said, very well. He asked us in to take some drink, he brought us from the shop into the tap-room, where one Sauls was drinking with him.

Did you drink any toasts?—He asked me, were we up to the new plan that was on. I told him we were not, but was very anxious to see it. With that, he sent the servant maid up stairs, and she brought down papers; he gave one to Thompson and another to me.

Was this one of the papers [a paper shown to the witness]?—This was the paper he gave me; I have a mark upon it.

Was there any farther conversation?—There was; on giving me that paper, we had a couple of pots of porter between us; and on second recollection, he desired me to give him the paper book again, as he could not give it to me without being sworn; he brought me back to a cellar, and I did not wish to go without Thompson along with me. He asked me, was he clear, or up to this affair. I told him he was; then he let him along with us, and nobody else was by.

What has become of Thompson?—He was murdered since near the Naul.

Jury.—Did he swear you?—He did.

Who did?—Finney.

Court.—Did he swear Thompson?—No, my lord, he did not.

Had you any farther conversation?—We returned and had a few pots, and Thompson went for a guard of the Inverness.

Did any thing pass respecting what hap-

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pened a day or two before? Was there any conversation about a green coat?

Mr. M'Nally.—I object to that question.

Witness.—He made a brag to me, that sixteen were taken, and two got away; that he got off, having a green coat and a black stock, the guard on the stairs took him for an officer.

Where did he say it was?—Somewhere in the Liberty.

Did he say any thing more relating to his escape?—No, sir.

Thompson went; what was the consequence?—He went for a guard, and brought a guard of the Inverness, and an officer, to whom he gave the two papers. The officer took Finney and Sauls, and I, as prisoners also.

Court.—Where did he bring you to?—Over to the Prevot in the barrack.

Did Thompson make any examination?—He did.

Before whom?—Mr. Alexander in William-street.

Did you?—I did.

Were you present when Thompson swore his examination?—I was.

And he is dead?—He is.

Cross-examined.

This was in the public tap-room?—I understand it was.

Was Finney searched in your presence after he was taken up?—Yes he was: I do not understand searching.

Was any hand put into his pockets to see what was in his pockets?—Yes.

Was any thing found on him?—His clothes were upon him.

Was there any thing in his pockets?—No.

He swore you upon a book?—He did.

And he put it into his pocket?—He did.

And when he was searched nothing was found upon him?—He might have mislaid it.

Were you in the Carlow militia at any time?—No.

Were you in the Carlow Buffs?—I was.

Then you know what Buff means. How came you to quit that regiment?—What do you imagine if all the deserters in Ireland had have got the king's pardon ———

You have got the king's pardon?—I have.

When you were in the Buffs did you not take an oath upon the Evangelist?—No, never.

Were you never attested?—No; I was taken and cramped.

And never attested?—No, never until I belonged to the Kildare militia.

And you never took an oath of allegiance?—I never swore.

Did you kiss your thumb?—No, nor my finger.

Did you ever go through the ceremony of swearing?—No.

Did you ever hear the articles of war read at the head of the regiment?—I never heard them.

Did you not hear some person behind you say "never" before you said it yourself?—I have not.

How long were you in the Carlow Buffs?—Three weeks.

Did you ever take an oath to obey the orders of your officers?—Never.

Did you receive any money as a soldier?—None, but my pay.

No money when you were crimped?—No, but half a crown.

No bounty?—No.

How long have you known Mr. O'Brien?—I never saw him till the day after Mr. Finney was taken.

You and he have been much together since?—No, I have been with my regiment.

How long have you been together?—I have not been with him, barring seeing him now and then here.

Did you not walk with him yesterday?—No.

Were you not here yesterday?—No.

Were you not upon Ormond-quay?—I was.

Did you not hear that Finney would be tried yesterday?—I understood from Mr. Kemmis that he would not be tried.

At what hour?—At ten o'clock.

You swore you deserted from the Carlow Buffs; what was the cause of it?—The reason I got no bounty, and my family, four children and a wife, being in town.

So you deserted in Carlow and came to hide in Dublin: did you not expect to be taken up as a deserter?—I came to Athy first.

That was after you were charged in Carlow or Kildare with felony. Were you ever charged with stealing any thing?—No.

Or receiving stolen goods?—No.

Did you not leave that regiment in consequence of a charge against you for receiving stolen goods? Was any charge made against you?—No.

Were you ever charged with receiving stolen goods?—No.

Was your sole motive for deserting to be with your wife and children?—The reason I can tell easy; I got no bounty and was not sworn, and then I took on in the Kildare militia, and I defy any body now.

You came up in coloured clothes?—I did.

You left the regimentals behind you?—I did, and got coloured clothes.

Court—Did you ever read that constitution?—I read part of it.

Do you know whether the oath you took is in that paper?—It is, please you, my lord.

And you swear this is the paper?—It is.

The following extract from the paper was read:—

T E S T.

"In the awful presence of God,
"I, A. B. do voluntarily declare, that I will
"persevere in endeavouring to form a bro-
"therhood of affection among IRISHMEN of
"every religious persuasion, and that I will

"persevere in my endeavours to obtain an
"equal, full, and adequate representation of
"all the people of Ireland. I do further de-
"clare, that neither hopes, fears, rewards, or
"punishments, shall ever induce me directly,
"or indirectly to inform on, or give evidence
"against any member, or members of this or
"similar societies for any act or expression of
"theirs, done or made collectively or indivi-
"dually, in or out of this society, in pursuance
"of the spirit of this obligation."

T E S T

For Secretaries of Societies or Committees.

"In the awful presence of God,
"I, A. B. do voluntarily declare, that as
"long as I shall hold the office of Secretary
"to this I will to the utmost of
"my abilities, faithfully discharge the duties
"thereof.

"That all papers or documents received by
"me, as Secretary, I will in safety keep; I
"will not give any of them; or any copy, or
"copies of them to any person or persons,
"members or others but by a vote of this
"; and that I will at the ex-
"piration of my Secretaryship, deliver up to
"this all such papers, as may
"be then in my possession."

Mr. Townsend.—With your lordships' permission, we shall now examine lord Portarlington, and it is fair to apprise the Court and the counsel for the prisoner, of the object of this evidence. The witness, O'Brien, gave an account of his informing lord Portarlington of what was going on. There is an attempt made to impeach the credit of the witness; and to show his consistency, we now produce lord Portarlington.

Mr. Curran.—If a witness be impeached, it is competent to set him up, and to show that the impeachment is not well founded. Every witness is impeached by a cross-examination; but it is not usual to hear evidence in support of the witness for the prosecution until the prisoner's case is gone through. You may examine to character, or to particular facts, and the witness may be entitled to call witnesses to his general character. But can the counsel for the prosecution say, "This man's evidence is impeached, or seems to be impeached by the counsel for the prisoner; therefore we think it necessary to support him now." I submit, it is not competent for them to set up his character now.

Mr. Justice Chamberlain.—The tendency of the cross-examination is, to impeach O'Brien in this particular transaction, and the witness now offered to be produced is to show, that he gave an account of the proceedings as they happened. It is not competent for them now, to produce witnesses to show, that the witness already examined is of good character; but they want to prove that his former account is consistent with his present. Such

evidence has always been received in my experience.

The Right Hon. John Earl of *Portarlington* sworn.

Your lordship saw James O'Brien, the witness, who was examined this day?—I have seen him.

Does your lordship recollect upon what occasion you first saw him?—I never saw him till the latter end of last April, when an acquaintance of mine, Mr. Higgins, brought the witness to my house. Mr. Higgins said, the witness had told him, he had matters to communicate to Mr. Pelham, but as he had not the honour of knowing him, begged of me to introduce him. I desired to know the matter and the character of the man. O'Brien told me, he had been lately admitted a member of the society of United Irishmen; that he there found out, there was on the Sunday following a great number of people to be collected under pretence of a funeral; that the man to be buried was already buried, and he apprehended, or heard, that it would lead to insurrection. He also mentioned some other circumstances, I do not remember all. He stated, that an attack was meditated upon the arsenal of the Castle: I told the matter to Mr. Secretary Cooke, and therefore did not lay it upon my memory.

How many interviews had you with him?—I think I had two interviews: I desired him to come no more, as I had communicated the matter to Mr. Cooke, to whom it belonged more than to me. I asked him, had he any thing new to communicate. He said, the United Irishmen were busy corrupting the servants of gentlemen.

Did all this conversation pass at one time?—I think it all passed at one time. All I mentioned first did.

Where?—At my house in Kildare-street.

When O'Brien related this matter, what did you do with him?—I went to the House of Commons and expected to see Mr. Pelham; he had some business, and Mr. Cooke came to the Speaker's chamber, where O'Brien related all that he did to me.

O'Brien afterwards called a second time?—He did.

Your lordship mentioned something that passed at the second meeting; can you state any thing more that passed at the second meeting?—No, I cannot. As well as I recollect, what he said, was at the first meeting; what he said at the second was trifling. I desired him not to come to me, but to apply to the executive government.

Had your lordship any farther meeting after the second?—I do not recollect: he might have come a third time; but I did not like his coming after he was in better hands with Mr. Cooke.

Is your lordship's recollection so accurate, as that you are certain, whether what you relate passed at the first meeting, or whether

some might have occurred at the second?—I believe the whole may have passed at the first meeting: he certainly gave notice of the burial.

So far you are certain?—I am.

And the rest was told by the witness?—It was.

Cross-examined.

Your lordship recollects, that he told you, the United Irishmen were busy among gentlemen's servants; that was at the first meeting?—I cannot recollect; I rather believe it was.

He told you of the funeral?—He did.

Did he tell you the name of the person to be buried?—He did mention the name and the house; but I do not recollect them.

He said it was a fictitious funeral?—He did, I think.

Mr. Attorney General.—My lords, on the part of the crown, we rest the case here; unless the evidence for the prisoner makes it necessary that we should go farther.

DEFENCE.

Mr. *McNally*.—Without offering an apology, for any deficiency on my part, I will address you, gentlemen of the jury, while stating the defence of the prisoner at the bar, in the mild and plain language of a plain man, assuming to himself no greater portion of ability than generally belongs to common sense: neither will I attempt to engage your passions, nor endeavour, by any affectation of oratory, to which I make no claim, to lead your judgments from those points which in my humble comprehension are the points you are to decide. But I will call your attention to those points upon which you will have to determine. And, gentlemen, at the opening of my client's case, I do think it my duty to relieve your minds from the apprehension of a long and laboured speech; for, while I solicit your attention, I do also tell you, that I shall be as concise in what I shall offer as possible. I say, I will address you simply, but I trust not weakly, for I shall address you *truly*, and truth has greater force than eloquence; its "still small whisper to the ear," sinks into the heart, and engages the mind to stricter attention than the loud voice of declamation.

Gentlemen, Mr. Attorney General stated to you, with his usual perspicuity and precision, the nature of the offence with which the prisoner at the bar stands charged in the indictment. He told you the offence was high treason; and he stated to you that the indictment contained two species of treason: First, treason in "compassing and imagining the death of the king;" and secondly, the treason of "adhering to the king's enemies," that is, adhering, within the realm, to the persons exercising the powers of government in France. Mr. Attorney General laid down to you, what he considered the true construction of the law upon the first count. It is not my

intention, on the present occasion, to controvert that construction, I will not touch upon the law of treason, and I will assign my reasons. First, I will not controvert it, because in my judgment, no evidence has been laid before you, to support the overt acts of compassing and imagining the death of the king, laid in the indictment; and secondly, I will not controvert the law on that species of treason, because I know it will be defined by the learned judges on the bench, substantially as the attorney-general has defined it,—it will come to you construed this day as it has been lately construed in England and Ireland—and I shall bow with reverence to the opinion of the king's justices. Permit me, however, my lords, to say that early in life I was taught to form a construction on the law of high treason, in compassing the death of the king, differing most materially from the law as stated by the attorney-general: and the construction I have formed has been recently strengthened in my mind by one of the most powerful and learned arguments I ever read, or perhaps, was ever urged to a court of justice; I allude to the defence of Hardy, Thelwall, and Tooke;* if my judgment be erroneous, that argument has strengthened my errors; but whatever I may have received, or whatever I now think of the law of treason, it having been ruled by the bench as the attorney-general has laid it down, I will not now attempt to enforce my opinion.

Gentlemen, for the reasons I have offered, I do accede, in the present case to the definition given by Mr. Attorney General, of the law of treason in compassing and imagining the king's death, convinced I am the construction cannot injure my client; and I do, therefore, gentlemen, admit that by the judgment of the Courts, the law does not require, to support an indictment for compassing and imagining the death of the sovereign, evidence to show, that the actual killing of the king was the object in contemplation of the party charged with compassing his death; but that, if there be unequivocal, undoubted proof, that the intention of the party was to bring about a revolution, whereby the life of the king might, by consequence, be in danger, such intention, made clear by overt acts, would, according to the construction put upon the act of parliament, on which the prisoner is now on trial, amount to a compassing the death of the king. Admitting this to be the law, what will you have to try? I say, admitting the law, as laid down by the attorney-general, it will be for you, gentlemen, to consider whether there has been sufficient evidence produced, to convince your consciences, that the prisoner at the bar was concerned in such a traitorous conspiracy as in its nature (not from interference, but facts proved by credible witnesses) went to overturn the established government of the country, whereby the life

of the king—a king residing in England—could be in danger.

As to the other species of treason contained in the indictment, and charged on the prisoner in the second count, that is, "adhering to the king's enemies, within the realm," that count requires a very different kind of evidence to give it such effect as will bring the charge home to the prisoner; for I do submit to the Court, that you, gentlemen of the jury, cannot decide against him on that charge upon inferences, probabilities, or deductions; you cannot draw conclusions from facts, however strong, or however numerous, that there was an adhering to the king's enemies in which the prisoner was concerned. No, you must have INDUBITABLE PROOF, proof independent of all question and all doubt of the very fact of adhering. I say the very identical fact of adhering must be proved to your satisfaction. I say the charge of adhering cannot be supported but by an accumulation of circumstances.

Gentlemen, I have acceded to the law laid down by the attorney-general in the first charge in the indictment; and, gentlemen, I do also accede to what that learned gentleman said when he told you "you have an awful and sacred duty to discharge;" for this is a prosecution carried on by the king, on a charge of the highest crime, that can be committed against the person of the king, against himself. It is not one of those prosecutions wherein the name of the king is merely nominally used, for the benefit of the public; though the injury is against the subject; therefore, gentlemen, awful indeed, and sacred is the duty you have to discharge, in this case, where the king is prosecuting one of the lowest orders of the people. I say awful is the duty, but I well know, men of your honourable description will recollect why, and for what purpose you are convened. You will not forget that, by the constitution of this country, a jury is that legal bulwark which protects the people when threatened by power, or injured by oppression; that a jury stands between the people and illegal power, as a constitutional and impregnable bastion; a bastion which Cromwell, in the full force of tyranny could not overthrow; and which James the 2nd, with all his arts and his subtleties could not sap nor undermine. Gentlemen, you will recollect that while jurors remain unshaken, while they stand firm together, unawed and incorrupt, the constitution of the country is safe, and so are the properties, the liberties and the lives of the people.

Gentlemen, permit me to solicit your attention to another object; it is this:—Your minds are not to be influenced against the prisoner, by the atrocity of the offence imputed to him; and so Mr. Attorney-general, with his usual candor, fairly cautioned you, in stating the case for the crown. Let me intreat your permission to go still farther; permit me to

* See volumes 24 and 25 of this Collection.

warn you with other cautionary observations, that your understandings may stand centinels upon your hearts, and guard your passions and your prejudices from every influence. I advise you, in the name of God, of justice and of mercy, not to let your minds be impressed by any consideration whatever, that does not come immediately within the true legal meaning and intent of that sacred oath you have this day taken—that oath by which you are sworn a true deliverance to make between the king and the prisoner. Remember, gentlemen, you are sworn to decide between the crown and the prisoner “according to the evidence, so help you God!” and therefore, I say you are to divest your minds of every circumstance not in proof before you, of all you have read, of all you have heard, of every fact stated by counsel, that has not been given in evidence before you on oath; the task may be difficult, but it is indispensable. After saying thus much to you, gentlemen, I have still much to combat with; and you have much to combat with. I have to combat with those impressions which loyalty makes on the honest and patriotic mind. I have to combat with influences resulting from public reports, but whether these have proceeded from private committees of the House of Lords, or private committees of the House of Commons; from these and from every thing extrinsic to the evidence you have heard, it is your duty to divest your minds.

There is another consideration to which, gentlemen, I will presume to guide your attention. You have heard the indictment read, implicating the prisoner in no less than thirteen open and specific acts of high treason; but, gentlemen, you are to expunge from your minds every one of those charges, except such as are supported by irrefragable evidence; and you will be directed by the Court to deliberate, and of course to decide on those facts only to which you give credence, that is if you believe any of them to be satisfactorily proved.

Gentlemen, I shall now put to you the question which I conceive you have to decide upon. In doing this I do not assume to myself the merit of composing that question; but, I will put it to you boldly, though not ably. I put it not, I say, as coming from myself, no, I advert to an authority high and respectable indeed; an authority to which the counsel at the Irish bar, because they admire learning and respect liberty, will pay deference, and to which you, gentlemen of the jury, will, I trust, pay attention. On the recent trials for high treason, in London, the attorney-general put the question to the jury honourably and proudly. He put the question to them proudly, because it was founded on principles of English liberty and personal security, which should make every Englishman proud. I will state his words—“It will be for you, gentlemen of the jury, to try upon this occasion whether the overt-acts are

made out as they are laid, by that ample and sufficient legal testimony which, I thank God, the law of England has required to be given to an English jury;” and then bursts forth the honest pride of the English lawyer, mark how he concludes: “whenever an Englishman is on trial for his life.”*

I have stated that he put the question proudly; I will tell you why I stated it so, and it will lead your minds to consider a partial distinction between the administration of the law of England and of the law of Ireland, on trials for high treason; a distinction that will come with force to your minds, and with favour to the prisoner. Bear this observation in your deliberations, that the law of Ireland is founded on the same principles with the law of England; and therefore, though the statute books of Ireland do not protect the people with those wholesome provisions with which the English parliament has regulated trials for high treason; yet I maintain that the principles of law being in both countries the same, you as jurors have authority to decide according to those principles, and on those principles you have authority to acquit the prisoner.

What are the reasons which elate an attorney-general of England with honest manly pride when he states the law of treason to an English jury? I will tell you what makes him proud: he is proud of the security which the law, in such cases, insures to the innocent. I will give you an idea of that law. Gentlemen, if the prisoner at the bar had been tried in England for high treason, though an Irishman, he would have been sheltered by all the privileges of an Englishman, in a similar situation—privileges which he cannot have here, in his own country. Had Patrick Finney been tried in England for high treason, he would have had delivered to him previous to his arraignment, a copy of the panel from which the jury were to be selected; he would, as matter of right, not of favour, have been furnished by the crown, with a list of their names, their additions and their places of abode; all these matters would have been made known to him in order that he might, by his agent and his friends, inquire into the private lives and public characters of his triers. An Irishman has no such privilege in his own country. An Englishman accused of high treason has no such privilege in Ireland! An Englishman would have a list delivered to him of all the witnesses summoned, on the part of the crown, to give evidence against him, in order that if any of them were men of infamous reputation, he might be able to impeach their credit by evidence, and thereby enable the jury to decide whether they were to be believed upon their oaths. Gentlemen, I will venture to say, had the prisoner at the bar such a privilege, your honest minds and

* See Stone's case, ant2, vol. 25, p. 1170.

generous feelings would not this day have been insulted and irritated by the evidence of such wretches as O'Brien and Clarke, whom you saw, whom you heard, and whom I trust you disbelieve: but not having that reasonable notice which by statute is allowed in England, to every man tried for high treason, the prisoner could not make any great discovery of the intended perjury, the villainy, the infamy of the witnesses who were produced against him. But, gentlemen, when his witnesses presently came forward to show you the little they could learn of the prosecutors characters, taking into your consideration the principle upon which the English statute was founded, that is, the protection of the innocent from false accusers, and taking it as a principle of Irish jurisprudence, you will decide upon that principle, you will stand his protectors in place of a statute, and you will, as friends to justice and to mercy, decide, not upon any defect in the evidence produced for the prisoner, but you will acquit upon the principles of English law, which gives to a prisoner the privilege I have stated; you will acquit because an Irishman ought not to be convicted, by an Irish jury, on evidence upon which an English jury would be directed by an English judge to deliver a verdict of not guilty!

Gentlemen, two observations more on this subject. In England a prisoner under trial for high treason has by the common law thirty-five challenges; in Ireland he is restricted, by statute, to twenty. In England he cannot be convicted without the evidence of two witnesses to one overt-act, or one witness to one, and another witness to another overt-act of the same species of treason. How is it in Ireland?—In Ireland, a man of the first situation, fortune, and character, may be tried and attainted, as a traitor, on the unsupported evidence of a single witness, and that witness a common informer, or a *particeps criminis*, swearing to save his own life. It may be said there are two witnesses here—but I say one witness only has given evidence of treason, for if Clarke has credit, which I am convinced he has not, he proved a felony by statute, not an overt-act of high treason, but as to that I shall observe presently.

Gentlemen, there are circumstances in the indictment worthy of observation, on which I shall however only slightly touch. It is a fact which no man of common sense will at this day attempt to deny, for it is a fact universally known, that a society of persons, styling themselves "United Irishmen," do exist in this country; and, as appears by their public declarations and other tests, have associated for the purpose of endeavouring to form a brotherhood of affection among Irishmen of every religious persuasion; and to obtain an equal, full and adequate representation of all the people of Ireland. Of that fact the crown has given evidence, and the

test of the society has been read. This society or association has been construed traitorous: and to lay a ground-work for such construction, to impress the jury, it has been artfully laid, in the introductory part of the indictment, that the prisoner, Patrick Finney, "falsely, maliciously, and traitorously, did join, unite, and associate himself to and with divers other false traitors, and enter into and become of a party calling themselves 'United Irishmen,' for the purpose of aiding, assisting, and adhering to the persons exercising the powers of government in France." To this assertion, for it is no more than assertion, for there has been no proof given that United Irishmen are traitors; I say to this assertion, as a general antecedent, every succeeding overt act adverts; and, gentlemen, you must have perceived, while the indictment was reading, that the fact of United Irishmen being traitors, is artfully laid in every overt act; and that each succeeding overt act adverts to the first. They all run, that the said Patrick Finney, A. B. and C. being such traitors as aforesaid, that is, being "United Irishmen," did assemble as aforesaid, trying to show to you that traitors and United Irishmen are one and the same character, and that they meet for the traitorous purposes charged upon them by the indictment. Gentlemen, is there any proof of this? and, gentlemen, if there be no proof of this charge, must not the whole fabric of this indictment, erected upon this fictitious foundation, crumble into ruin? I trust this observation will be received, by you, with full force. I trust you will differ in opinion from the ingenious lawyer, whoever he may be, that drew the indictment, and I therefore am confident that though you should believe, and no doubt you do believe, that the prisoner at the bar did belong to the society of United Irishmen, yet, as there is no proof, you will not believe that he did belong to such a society as a traitor, though as such he is artfully and unjustly charged in the indictment. You will say, "we cannot convict this man of high treason, though we believe him to be a sworn United Irishman." Gentlemen, I will show you the reasons why you will say so; first, because there is no evidence to convince you, that the Society of United Irishmen associated for traitorous purposes; and secondly, because there are two acts of parliament upon which the prisoner might have been indicted for administering or tendering the oath or obligation of the society. It may be said, "that is matter of law,"—suppose it is—you the jury have a right, in a criminal case, to decide upon the law, as well as upon the fact, the law invests you with that right, and God forbid it did not! In saying this I am not wishing to insinuate that you should not attend with deference and respect to the law, as it is laid down to you by the learned judges, mercifully it will be laid down, I know; but, gentlemen, I say, the prisoner cannot be

convicted as a traitor, merely because it is proved he is a sworn United Irishman, for as I before stated, there are two acts of parliament existing in this kingdom, under one of which the prisoner, for administering or tendering an oath or obligation might have been transported for life, and under the other, might have been hanged as a felon; for by the latter act the very fact of administering an illegal oath or obligation is made felony without benefit of clergy, which shows it is not an overt act of treason, though subtilly introduced as such into this indictment.

Gentlemen, I am proceeding now to state to you the statute on which Patrick Finney stands indicted. It is called the statute of treasons, and it was enacted so far back as the 25th year of Edward the 3rd. This act, this guardian of the commonwealth, creates no novel right, gives no new privilege to the people. It is a declaratory statute, a statute declaratory of the ancient wholesome common law, and I state it to be such, in the hearing of the bar and in the hearing of the bench, confident that the position can not be controverted. I state, that this statute of the 25th of Edward the 3rd, was made in consequence of subtle and illegal constructions which servile and corrupt judges, under the influence of superior powers, put upon the law of treason, by which the people were entrapped, not knowing what was, or what was not treason as heretofore in the case of libel or no libel: and, gentlemen, to relieve the people from this oppressive grievance, the legislature in the first instance, as in the second; passed an act to tell the people what was and what was not treason; and therefore nothing, that has not been made treason by act of parliament, subsequent to the 25th of Edward the 3rd, can be construed into treason at this day.

Treason being thus defined, circumscribed and made certain, by this declaratory statute, it is unnecessary for me to lay before you what was treason at common law. The two offences charged upon the prisoner are each of them high treason by the statute; let us see then, how and in what manner he is to be convicted according to the law of the statute. The statute says, "that every man charged with the above treasons"—compassing and imagining the death of the king, and adhering to the king's enemies—"shall not be attaint but by *provable* evidence," and lord Coke, commenting on these words of the statute, says, "the prisoner must be convicted, not upon conjectural presumptions on inferences or strains of wit."—In those days, gentlemen, those strains of wit, mentioned by lord Coke, were not strains of wit according to the modern acceptation of the word; they were those strains of influence and construction which disgrace the State trials, which have disgraced lord Coke himself, and by which men have suffered the pains and penalties of treason; but they are now ex-

ploded, and men, I trust, will never suffer so again! Lord Coke goes on and says, "the words of the statute are not that he shall be *probably* attainted, for there a common inference might serve, but *proveably* attainted."—What does *proveably* attainted mean? On its meaning the prisoner's life may depend—I am not ashamed to adopt the language of any man, of whose abilities and judgment I have a better opinion than of my own—I will therefore give you the true meaning of that technical comment of lord Coke, in a precision and an elegance of language I cannot pretend to—I say *proveably* attaint is "not by that demonstration of evidence which belongs to matter of science; but that moral demonstration without which no man can sleep who has given a verdict of Guilty."—Let those words sink deep into your minds; that the kind of evidence which has come before you, this day, is perhaps *probable*, but certainly not *provable*, and *provable* evidence is the only kind of evidence, as the learned judges will presently tell you, on which you can legally and conscientiously decide, and bring in a verdict against the prisoner; for on *probable* evidence you are implicitly bound to acquit—and you will acquit.

Gentlemen, I will lay down for your consideration a broader scale of evidence than the counsel for the crown may wish to adopt. I will venture to tell you,—the Court will correct me if I am in error,—that before you can decide on a verdict of guilty, you are not only to be convinced that the prisoner has committed some one of those overt acts of treason, but also that each overt act was committed by him with the treasonable intent charged upon him by the indictment—and therefore though you should believe that every thing, stated by the witnesses for the crown, were strictly true, and that would imply that these witnesses deserved credit, yet should you not believe that it was all done by traitors, with an intent to overturn the government by bringing in a foreign enemy, the law is that you must acquit the prisoner; for, gentlemen, the charge set forth in the indictment is, that the prisoner being a false traitor, did intend to overturn the government by aiding and abetting the persons exercising the powers of government in France, in case they should invade this kingdom. On this point I will submit to your judgments, an illustration of my argument, the declared opinion of a truly honest Englishman, and a great lawyer, Sir John Scott, publicly promulgated on a trial for high treason. His words are:—"You cannot, whatever may have been the conduct of the prisoner, convict him of the treason with which he is charged, unless you are satisfied of the wicked purposes of his heart; and that the acts that he did, were done by him with a full knowledge of the dangerous and malignant purpose to which they were directed, with a deliberate intention in his mind of overturning the go-

verment, and thereby compassing and imagining the death of the king." You must not only then, gentlemen, believe the facts to have been committed, but you must, to adopt the words of the noble character I have quoted, believe it was for no other purpose than to overturn the government, in the full malignity of a base heart.—Gentlemen, if you find him guilty at all, you must find that awful verdict, not merely on his overt acts, but on his intention; for he cannot be guilty of the overt act without first conceiving the intention, and the intention, I will venture to say, in a criminal case, is not only the essence of the crime charged upon a prisoner, but is matter of fact, upon which the jury, and the jury alone, are competent to decide.

From what I have stated to you, gentlemen, arises a subject for your most serious consideration indeed—and that is the degree of credit due to the witnesses who have been this day examined against the prisoner. A noble lord was produced avowedly to support the testimony of O'Brien, the informer; for, gentlemen, it was no doubt foreseen, by those who conduct the prosecution, that his evidence would want support. When you retire to the jury-room you will compare what was deposed on oath by the noble lord, with what was sworn to by the informer, and you will then decide, upon the solemn and religious obligation you have taken, whether what they have both sworn this day can be true and consistent. And when I call your minds to this comparative view of the evidence, as the guide of your decision, when deliberating on your verdict, I am not backward in saying that you must give credit to the noble lord and reject the evidence of O'Brien, the informer, as false.

On that point I will make a few observations, I will call to your recollection the evidence of O'Brien, and state where his contradictions are to be found.—He swore he had no knowledge of the intent to seize on the ordnance in the Castle, until the third meeting of the societies—but mark, lord Portarlington stated to you, on his oath, to which I am convinced you will give implicit credit, that at the first meeting O'Brien did mention that circumstance; these are his lordship's words: "I recollect he mentioned something of an attack upon the arsenal, that at the second interview nothing material passed, and at the third nothing passed that his lordship could recollect." Gentlemen, you must have observed the manner in which this miscreant concluded his testimony. Did you not remark him with impatient zeal and eagerness, sometimes anticipating the questions put to him by the counsel for the crown at other times answering before the question was finished? Did you observe how he sat upon his chair, fearless and enshrined in his own impudence; fortified by audacity and impunity? Did you mark how he answered Mr. Curran on his

cross-examination? And did you not see with what reluctance truth was extracted from him, and that he was forced to confess facts which established his falsehood? Why, gentlemen, his manner and behaviour impeaches his veracity as strongly as his contradictions!

Gentlemen, let me remind you of the character which Mr. O'Brien was obliged to give of himself; "I came," said he, "to an independent situation by the death of my father"—Then he told you, he disposed of his inheritance—became a common soldier—a common drunkard, and now, gentlemen, he is a common informer!

You heard this witness, who acknowledged that drunkenness had been the marked conduct of his life, you heard him insinuate something against Mr. Roberts, whom he expected to see here as a witness, which was the excuse for that insinuation—I believe his words were these: "I will settle him if he gives me a bad character." Mr. Curran asked him, "Had you a sword or pistols about you when you threatened to settle Mr. Roberts?"—He answered, "I had a sword."—Mr. Curran asked him, "Had you a pistol?"—He equivocated, his answer to the question was; "I don't doubt but I might have had one, but I did not mean to settle him by sword or pistol; but he did something at an auction." Mr. Roberts was to have been settled for something, or for nothing, he had done at an auction; and this something, or this nothing, the informer would have converted into a felony. What is the true construction of this evidence?—Gentlemen, it is this: The informer, that is the witness O'Brien, has told you, he might have murdered Mr. Roberts with his sword or his pistol, but there was a *Mislier* way to be revenged of him—What way?—Why he might have sworn away his life by legal prosecution—murder him as he has attempted to murder my client—murder him by form of law—Yes, gentlemen, the informer had his choice—arms or legal process—he might have put him to death by sword or pistol, for daring to give him a bad character, or he might murder him by form of law—by bearing false witness against him—he might murder him by perjury.

Gentlemen, I do not controvert, that O'Brien is what the law calls a competent, that is, an admissible witness; but, his competency is not with you—you are to decide on his *credibility*. But why is this reptile competent?—because, notwithstanding the multitude and enormity of his crimes, God has not visited him with vengeance—because the law has not pursued him to conviction for any of his atrocities. If O'Brien had been convicted of coining, or of any other felony, he could not have been examined as a witness, he would have been incompetent, and, on producing the record of his conviction, the venerable judges of the bench would have told you, he could not be examined at all.

Then, gentlemen, consider what is the principle of law on which their lordships would so decide. It is this, that a man rendered infamous by conviction can not have credit in a court of justice. How does this principle apply in the present case, where there has been no conviction? Mark the application, it is the pivot on which your verdict must turn. I do say, on the principle of law which I have stated, that if you believe conscientiously that O'Brien is a felon, if you believe his own confession that he has been a coiner, you must conclude that he is incompetent to impress your minds in favour of his credit; and you must reject his evidence as untrue, as the evidence of an infamous character who has forfeited all claim to veracity. I repeat it—and I am happy to see you attend to me—I repeat, had this informer been pursued to conviction, had he stood a recorded murderer, coiner, thief or pilferer, his infamy would have rendered him incompetent in law; it would, as a witness, have as completely closed his mouth as the hand of death. And I therefore adjure you to remember, that though he has not been convicted, the record of which conviction must have rendered him dead in law, yet his own confessions of guilt, if they have not totally destroyed his credit as a witness, must have created in your breasts a *doubt*—a *doubt* on which you will found your verdict of Not Guilty; for, gentlemen, I do boldly assert, without fear of contradiction, that *doubt* and *acquittal* are synonymous terms in the law of the land.

I am near a conclusion: The attorney-general, has told you, and the Bench will tell you, that where you doubt, you must acquit. Suppose the prisoner at the bar to be an infamous character; would you give credence to any witness of equally infamous character, appearing against him?—Certainly you would not. But, we will show you that the prisoner is a man of excellent character, and then taking into consideration the infamy of O'Brien, will you not doubt, and doubting, will you not acquit? Gentlemen, you will not say, upon the evidence you have heard from O'Brien and Clarke, coadjutors in perjury, that the prisoner at the bar is guilty of high treason, but you will concur with the law and say—"we *doubt* and we *acquit*."

And here, gentlemen, I must differ with the attorney-general—he has told you that the atrocity of the offence should have no effect on your minds; but I think it ought to have great effect; for I think, as it requires the most indubitable proof to convince you that the prisoner has committed the heinous offence charged upon him, the greatness of the offence should weigh in favour of the prisoner; and therefore I say, that where a man of infamous character makes a charge of such a nature, the atrocity of the charge, coupled with the baseness of the witness, should insure the prisoner his life—doubt it must create—though the prisoner gave no evidence to his

moral character; but how strong, how imperative on your consciences must that doubt be, if the prisoner appears before you an honest man, though a very poor man, of unimpeached reputation? If that should be the case, and I am instructed to say we shall give such evidence, it must radically destroy all O'Brien has said, and you will not leave the box without a verdict of acquittal.

I trust, gentlemen of the jury, you will conceive that I have been right in urging to you that doubt and acquittal have the same meaning; at least that the latter is the legal, and indeed the just as well as the merciful consequence of the former; and that, on that ground, you will give life and liberty to the prisoner. Gentlemen, we have some evidence to produce—you will hear their testimony—I have prudential reasons for not stating it—the duty of observing on the evidence falls to abilities far superior to mine—I have only to add that, leaving the life of my client to your disposal, I leave him to your fiat with confidence—God direct you—On my own part, and on the part of the prisoner, most gratefully I return you thanks, for that patient attention you have paid to my arguments—your verdict will show their effect.

[After Mr. McNally had concluded, the evening being far advanced, and a probability of the trial continuing some hours longer, the Court adjourned for twenty minutes, and the sheriff was ordered to provide some refreshment for the jury—but they were not allowed to quit the box.]

When the Court was resumed,

Mr. Justice *Chamberlain* said.—We wish, that the counsel for the prosecution would point out the overt acts upon which they mean to rely, and to which they apply the evidence, before the counsel for the prisoner shall speak to the evidence.

Mr. *Curran*.—My lords, we first pray that the paper which O'Brien admitted to be his hand writing, and given by him to Purcell, may be read.

The paper was then read as follows:—

RECIPE

"To plate Copper or &c.

"File up some silver very small—add to as much aquafortice as shall cover the silver, then simmer them in a tea cup for 2 m^{rs}. then add to a small quantity Crame a tartar, then dip in your cork and s^d. plate—then boil them in salt and water, till you see them grow whyte, then rub them with Crame a tartar."

"A mixture of Minerals that shall equal Silver.

"Take 1lb. of long graind tin—Do. of Rock solder, or whyte Spilter, 1lb. of Block tin.

4 A

"N. B. to be melted all to Gether & to be
"poured into a pint of vinigear, a dram of
"Suppliment—lb. of pine top ashes—this is
"not to be melted more than 1 time in the
"above mixture of waters.

"N. B. the Liq^r. must Be waram."

"For melting minerals you must have
"white-rock-asknick to extract silver from
"copper you must have sadcramonick.

"Rig^t. Hon^o. the Countess

"Mercurul-watter

"Venegar & pine top ashes."

Margaret Moore sworn.

Where do you live?—At Stradbally in the
Queen's county, about forty-miles from this.

Pray, Mrs. Moore, do you know James
O'Brien?—I did know a James O'Brien, who
lived in Stradbally, and was reared and born
there.

Do you know his general character?—I do
since he was born.

In what line of life are you?—I am living
in an industrious situation, in a shop in Strad-
bally.

Are you a married woman?—I am a mar-
ried woman.

Do you know the general character of that
James O'Brien?—I knew his general charac-
ter until he came to Dublin, and have heard a
great deal of it since.

From your knowledge of his general
character, do you believe he is deserving
of credit upon his oath?—During the time I
knew him in his father's life time until he
came to manhood, I would not give a groat
for his oath, and that is enough at present.

Do you say for his general character, that
he is not deserving of credit?—I do, if I were
to die for it this moment.

Do you recollect whether you were arrested
at any time by any body?—I do. He come
to me in the morning, and asked me was I
ready to come to Dublin: I told him I was
not, because I did not choose to go in his
company. He then said, his wife and he
were coming off; they went on Monday and
I came on Tuesday—the least money we have
the most we must make of it—I was at
Monntjoy-square, and as I was coming over
the bridge, a man came up near to me. I
asked him, what was the matter: he asked
me was my name Moore. I said it was; he
said he had a small-demand against me. I
asked him at what suit. I tell the story as
well as I can; he said James O'Brien. James
O'Brien, says I, I know the man right
enough; the dirty black-guard, what demand
has he against me? They brought me to the
tholsel or spunging house, and James O'Brien
came to the door. I said, "you scoundrel
what demand have you against me?—if you
come to a friend's house I will give you satis-
faction that I do not owe you any thing." I
called to the lady of the house, and asked her
to keep two guineas for me, till I would call
next morning. I came to the tholsel next

morning. O'Brien was there—"Are you
there, my gentleman," says I—"You see I
am," says he—"Very well," says I; "I must
know how I owe you this money." I took
out a summons for him. Then the sitting
justice said, "Where do you live?"—"I re-
side forty miles from this," said I, and I gave
O'Brien the lie, not minding what I said.
The magistrate offended, said, I had given
the lie, and he tore the order, and that was
all; and I hope I have said enough. The
bailiff told me at another time, that I hindered
him of getting at the money.

That money was ordered back to you?—
It was.

Court.—What house was this money de-
posited in?—The house where I was lodged,
the spunging-house.

Cross-examined.

How often have you been in Dublin before
this?—I cannot tell.

You have been very often?—I have been
two or three times a year.

You have been acquainted with the sitting
justices?—For a part.

You have been acquainted with them be-
fore this time?—I never was before him,
before that time.

What is your husband's name?—Kelly.

Where does he live?—Near Mountmellick,
in a gentleman's service.

How long is it since you and he have been
apart from each other?—I see him as often
as I can: he lived with Mr. Cassan of Shef-
field, and it was Mr. Fletcher brought him
there.

Did not O'Brien think you were married?
—He did not see me married, but I believe
he thought I was married.

How long are you married?—Thirty-three
years.

And knowing that you were a married
woman, O'Brien had you arrested. Did you
tell the sitting justice you were married?—
No.

Did you ever take a journey to Kilkenny?
—Me!

By virtue of your oath?—I did live at Kil-
kenny.

How long ago?—Twelve years ago.

You went to live there?—I did.

From Stradbally?—Yes, sir.

For what reason?—I had a son bound
prentice to a shoe-maker, one Speare, and I
had some friends of the name of Fitzpatrick,
and I went there.

Was there no charge against you in Strad-
bally?—No, I never heard of any.

Did you ever live with a man of the name
of Archbold?—Me!

In the way of service I mean?—No.

Do you know a man of that name or Ash-
bold?—My husband lived with a gentleman
of that name.

Was there a charge against you respecting
curtains?—Against me! I have never heard
of any thing of the kind.

Is there a woman of the name of Walker in Stradbally?—There is, Molly Walker.

Was there any thing said about butter, bacon, or such articles being stolen?—I never stole any.

Was there ever a charge made about it? Your husband knew this man O'Brien, as well as you did?—No, he does not.

You live in the town of Stradbally?—I do, and honestly.

What rent do you pay?—Eight guineas a year.

What have you for that?—I have a house, with a shop.

What commodities do you deal for?—In crockery ware and delft, when I can touch it, tea, sugar, eggs and bread, and every thing I can put my hand to, and make a penny by.

You put a hand to any thing you meet?—I do in that line, not in any other.

[Here the jury desired she might point out O'Brien, which she did—saying, "That is the very identical lad."]

Did you ever hear of this man being examined as a witness before?—No, I knew nothing about him but what I told you.

How long since you were arrested?—Last May twelvemonth.

Did you travel with him?—No.

You were very intimate with him?—No, not any more than any other: I kept him off, as well as I could.

Did you ever eat or drink together?—I never drank a drop of tea with his wife in my life.

How came this man to propose to you to come to town, if you were not intimate? How came it to be planned and settled, and agreed upon between you?

Mr. Carran.—She said no such thing.

Did you not say, he thought you would be to town with him?—Well, suppose so; I will not say any more.

Did you not say, he thought you would be to town with him?—I will not answer any more.

You must?—He called in the morning, and I said I was not ready, and he went off by himself.

Did you not say, he thought you would be with him?—I do not know whether he thought so, or not.

Did you say so?—I do not know; he said one Nalty and himself were going to town, and I said, I could not go.

I ask you again, were you not upon such terms, that he proposed to travel with you?—I would come with others, I thought less about.

How long have you lived in Stradbally? Since I was born; I have been thirty-three years keeping house.

Do you know any person of the Queen's county here?—I do: Mr. Gray, Mr. Greaves, and Mr. Dunn.

They are witnesses along with you?—No; they were here before.

John Clarke examined.

Where do you live?—At the Blue Bells. Do you mean in the county of Dublin?—

Yes.

How long have you lived there?—Since I was born.

What business?—A bleacher.

Any other?—The public business.

Do you know James O'Brien?—Yes.

Would you know him now, if you saw him?—There is the man.

What business does he follow?—I do not know.

Did he ever tell you what business he followed?—No, but he came to me as a revenue-officer.

How do you know that?—By pulling out a pocket-book and some paper, and I being simple, thought him an officer.

To what place did he come?—To my house.

Did he tell you what the paper was?—He demanded my licence from me, and I did not know but he might be an officer.

Court.—What papers did he pull out?—He pulled out a paper as for a licence; he said he would run me to 17*l*. expense. I gave him two and two pence, and twelve pence in halfpence.

At that time, did he say for what he would run you to the expense?—For selling spirits without licence; I did not know but he was the right person.

What do you mean by supposing him the right person?—I did not know but he was a real officer.

What happened there?—He came three or four days after, demanding more money.

Court.—What did you give him the three shillings for?—On his demanding a licence. Afterwards he came and said, if I gave him half a guinea, he would not trouble me again, nor suffer any body else.

So you gave him two sums?—I did.

Was he sober when he came to you in this manner?—He was, and pleaded poverty, and he wanted shoes, and desired me to assist him.

Had he been acquainted with you before?—I never saw him before he came to me in this character of an officer.

If O'Brien said, he never passed as a revenue officer, would he swear true?—No: he passed as a revenue officer to me.

And he was sober?—He was.

Did you give that money as civility money to an officer?—I gave it in fear, to tell the truth, for he said he would take the bed from under me.

Cross-examined.

You keep a public house at the Blue Bell?—Yes.

How long?—Two years.

Have you not sold liquor more than two years?—I have kept the opposite house, twelve years ago.

How long have you sold liquor?—I sold liquor in James's-street; I have sold malt and huxtery.

Do you mean malt liquor?—Yes.

Did you sell any little spirits in that time?—I am a working man, and keep a bottle for myself.

Mr. Curran.—He is not bound to answer these questions.

Mr. Justice Chamberlain.—He is not bound to answer them, but may if he choose.

Pray did O'Brien ever drink at your house?—Not to my knowledge, barring a draft of malt.

Have you always had a licence for selling liquor?

Mr. Curran.—He is not bound to answer.

O'Brien called at your house and showed you a paper, and told you he would charge you with selling liquor?—He did.

He said he would prosecute you?—He said he would bring the army there, and take the bed from me.

Did he not threaten you to prosecute you if you did not give him money?—He said he would bring the army there, and I gave him two and two-pence in silver, and twelve-pence in brass.

And you have been a publican in James's-street and at the Blue Bell, and you were threatened by a man, saying he would bring the army upon you. Did you see a summons?—I do not know; I cannot read.

Did he not threaten to prosecute you?—He did sure enough.

When did you first tell this story to any body?—Immediately after it happened.

To whom?—To my neighbours.

Mention them?—To John Hanlon of the Bleach-Green.

Did you see O'Brien since that?—I did, in James's-street.

Is there not a justice of peace near you?—There is.

Did you complain to him?—No.

And when did you tell Hanlon of the Bleach-Green?—I told it often.

You were afraid O'Brien would prosecute you; you know Cavanagh of the Red Cow?—I do; he is here.

You have often talked with Cavanagh about this matter?—We have.

How often within these four months?—I met Cavanagh upon his own ground, and he talked to me often.

How came you here to day?—I came here to tell the truth.

Did you come here of yourself?—I did.

You heard Finney was to be on his trial?—I did.

And what of O'Brien?—I heard he was under a bad character.

And what made you come here? from a point of conscience and justice?—Yes, without fee, or reward.

And how came you to come here without fee or reward?—To tell the truth.

What invited you?—Nothing more.

You heard by account, that Finney was to be tried?—I did.

And out of justice you came, hearing of this trial? and that is the truth?—Yes.

And the whole truth?—Yes.

How long do you know Finney?—I do not know him.

Court.—Were you summoned?—I was.

When were you summoned?—This day.

Was that the first day?—No, I was summoned yesterday.

When before?—Yesterday week.

When before that?—I cannot recollect.

And to whom did you mention this matter before?—I do not know.

You came of your own accord for a man you do not know? Can you tell how you came to be summoned?—I cannot.

And have no guess about it?—No.

Have you a great resort of company to your house?—No, very few.

An odd meeting of a Saturday night?—No: but a few of my own workmen.

Jury.—Did O'Brien say he was a revenue officer?—He did.

William Dunn sworn.

Where do you live?—At No. 57, Dame-street.

What is your way of life?—Shop-keeper to Mr. Butler, at present.

Do you know James O'Brien?—I know James O'Brien of the old mill near Stradbally.

Look about and try if you see him?—This is the man.

Have you known him long?—Since he was a child.

Have you known his person and character?—Since his father's death.

From your knowledge of his general character, do you think he deserves to be believed upon his oath in a court of justice?—Why indeed and upon my oath, I would not take his oath, nor believe his oath for any small matter.

Do you know Mrs. Moore, who was on the table a while ago?—I do.

Court.—What do you mean by saying, you would not take his oath for a small matter?—That I would not take it for three-pence, or any thing at all; I would not believe him.

Cross-examined.

Did you ever hear of this man being examined in a court of justice before?—No: it is from other matters I form my opinion.

Patrick Cavanagh sworn.

What business do you follow?—A farmer.

What else?—I keep a carrier's inn.

Where do you live?—At Inchecora.

Do you know the Red Cow?—Yes, I keep that house.

Do you know James O'Brien?—I have seen him several times.

Would you know him?—I believe I would.

Do you see him there?—I do not know; [Here O'Brien was pointed out to the witness] I think, that is the man.

Do you remember his ever coming to your house?—I do.

What passed?—He came to my house and said he was stopp'd in the walk; I thought Fitzpatrick was the man; no, said he; why then, said I, he was here yesterday; then said he, Fitzpatrick is to show me the way till I am acquainted with it.

Did he ask any thing from you?—No.

Was he very drunk?—No: he was very sober, I think.

Did he come to you again?—He did.

What passed that time?—He came to the cellar, and there was a hoghead of beer and one of porter, and he turned the cock and examined. He asked me to lend him fourpence, which I did, and gave him his breakfast. He then summoned me; and a man came to me and said, he was sorry for me; why? said I; because said he, you have a large family, and God help you when he gets the book into his hands.

Did any thing farther pass?—Yes: I went to the justice; a man desired me to make it up; I said I would, rather than be in such hands. I was told he said I assaulted him. I said, if giving him his breakfast was an assault, I assaulted him.

Did you make it up?—I did, when I saw him the next day.

What money did you give him before that time?—All I had.

How much was that?—Two guineas and some change.

For an assault never committed? Did you ever assault him?—Never, by my oath.

Is O'Brien a man, that ought to have credit upon his oath in a court of justice?—I do not know him, but what I have told you.

George Howell sworn.

What is your situation in life?—Clerk in a public-office.

What office?—Justice Wilson's office.

Do you know James O'Brien?—I do.

Did he ever go to your office?—He did.

Upon what occasion?—He came there one morning; Mr. Wilson was not there: he wanted summonses for persons who sold liquor without licences. I asked in what walk? he mentioned the Cow and Calf, and Fox and Geese; I asked him, what was become of Fitzpatrick, whom I knew? he said he was turned out, and that he supplied his place: I said there were not summonses enough; sometimes we have one or two, sometimes twenty. He took out a large pocket-book, and said he had plenty from the commissioners of the revenue and Mr. Swan. I did not see the fellow for some days after. I met Fitzpatrick in some days after, and expressed my sorrow, that he was turned out. He asked me, who told it? I said O'Brien.

The greatest rascal and informer upon the face of the earth, said he. We met him near Bishop-street, and I asked him about it, and he ran up Bishop-street, and I never saw the fellow since that time to this.

Was he sober?—Perfectly; it was ten o'clock in the day.

William Byrne sworn.

Did you see a man of the name of Clarke in court to-day?—I did.

When did you see him before?—Yesterday.

How was he dressed?—In a short jacket, in scarlet.

Where did you see him yesterday?—In court standing there.

Did you hear him swear he was not in court yesterday?—I did, which is the cause of my coming forward in this manner.

Did he swear true?—He did not.

Bernard Cummins sworn.

Do you know the prisoner at the bar?—I do.

How long?—Many years.

What business do you follow?—The tobacco business.

What is his general character?—I never heard any thing improper of him.

Did you ever hear, until the present charge, of his loyalty being impeached?—Never.

Court.—Did he work with you?—He did.

How long?—Many months.

Cross-examined.

Was there ever any charge made against you?—No.

Were you ever taken up on any charge?—No.

[Case rested for the prisoner.]

Peter Clarke called up again on the part of the crown.

When you were upon the table before, you said, you were not in court yesterday?—I made a mistake, being so puzzled.

Were you here yesterday?—I was.

Did Mr. Kemmis send to you?—He did.

Was it to come or stay from court?—To come to court.

Did you come?—I did.

Cross-examined.

Did you not say, that Mr. Kemmis desired you not to come?—I did, being puzzled, and I did not know any thing of law.

Then not being a great lawyer, you came here and said you did not?—I did.

Were you ever upon the table before?—I was.

Then you are not so simple in the business?—I never swore wrong before.

You swore against one Lynch?—I did.

Was he found guilty?—No.

Mr. Attorney General.—The Court have been pleased to ask, to what overt acts, we

apply this evidence. I say, my lords, we apply it to all the overt acts—first, that he became a member of the Society of United Irishmen; there is evidence of that: that he confederated with them to assist the French; that he with others consulted and agreed to send persons into France to invite the French to invade this kingdom.

Mr. Justice *Chamberlain*.—I do not think the evidence supports that. But in short you think there is evidence to go to all the overt acts?

Mr. Attorney General.—My lord, I do.

Mr. CURRAN.*—My Lords, and Gentlemen of the Jury;—In the early part of this trial, I thought I should have had to address you on the most important occasion possible, on this side of the grave, a man labouring for life, on the casual strength of an exhausted, and at best, a feeble advocate. But, gentlemen, do not imagine that I rise under any such impressions; do not imagine that I approach you, sinking under the hopeless difficulties of my cause. I am not now soliciting your indulgence to the inadequacy of my powers, or artfully enlisting your passions at the side of my client. No! gentlemen, but I rise with what of law, of conscience, of justice, and of constitution, there exists within this realm at my back, and, standing in front of that great and powerful alliance, I demand a verdict of acquittal for my client! What is the opposition of evidence? It is a tissue which requires no strength to break through; it vanishes at the touch, and is sundered into tatters.

The right honourable gentleman who stated the case in the first stage of this trial, has been so kind as to express a reliance, that the counsel for the prisoner would address the jury with the same candour which he exemplified on the part of the crown; readily and confidently do I accept the compliment, the more particularly, as in my case I feel no temptation to reject it. Life can present no situation wherein the humble powers of man are so awfully and so divinely exerted, as in defence of a fellow-creature placed in the circumstances of my client: and if any labours can peculiarly attract the gracious and approving eye of heaven, it is when God looks down on a human being assailed by human

* I have availed myself of the report of this speech which is given in the fifth edition of "Curran's Speeches." The preface to which publication, states that "His defences of Finney and Bond were considered by the bar as his ablest performances at the State trials of the year 1798. But unfortunately, the imperfect reports, which from accident or design were given to the public, are rather memorandums of facts, than specimens of the talents of the advocate. If better could have been procured, the public should have had them."

turpitude, and struggling with practices against which the Deity has placed his special canon, when he said, "Thou shalt not bear false witness against thy neighbour;" "Thou shalt do no murder!"

Gentlemen, let me desire you again and again to consider all the circumstances of this man's case, abstracted from the influence of prejudice and habit, and if aught of passion assumes dominion over you, let it be of that honest, generous nature, that good men must feel when they see an innocent man depending on their verdict for his life; to this passion I feel myself insensibly yielding; but unclouded, though not unwarmed, I shall, I trust, proceed in my great duty.—Wishing to state my client's case with all possible succinctness which the nature of the charge admits, I am glad my learned colleague has acquitted himself on this head already to such an extent, and with such ability, that any thing I can say will chance to be superfluous; in truth, that honesty of heart, and integrity of principle, for which all must give him credit, uniting with a sound judgment and sympathetic heart, have given to his statement all the advantages it could have derived from these qualities. He has truly said, that "the Declaratory act, the twenty-fifth of Edward 3rd, is that on which all charges of high treason are founded," and I trust the observation will be deeply engraven on your hearts. It is an act made to save the subject from the vague and wandering uncertainty of the law. It is an act which leaves it no longer doubtful whether a man shall incur conviction by his own conduct, or the sagacity of crown construction: whether he shall sink beneath his own guilt, or the cruel and barbarous refinement of crown prosecution; it has been most aptly called the blessed act; and oh! may the great God of justice and of mercy give repose and eternal blessing to the souls of those honest men by whom it was enacted! By this law no man shall be convicted of high treason, but on proveable evidence; the overt acts of treasons, as explained in this law, shall be stated clearly and distinctly in the charge; and the proof of these acts shall be equally clear and distinct, in order that no man's life may depend on partial and wicked allegation.

It does every thing which human foresight could do to bring the guilty man to judgment, and to save the innocent; it does every thing but uttering the verdict, which alone remains with you, and which, I trust, you will give in the same pure, honest, saving spirit, in which that act was formed. Gentlemen, I would call it an omnipotent act, if it could possibly appal the informer from our courts of justice; but law cannot do it; religion cannot do it; the feelings of human nature, frozen in the depraved heart of the wretched informer—cannot be thawed!

Law cannot prevent the envenomed arrow from being pointed at the intended victim.

but it has given him a shield in the integrity of a jury! Every thing is so clear in this act, that all must understand: the several acts of treason must be recited, and proveable conviction must follow. What is proveable conviction? Are you at a loss to know? Do you think if a man comes on the table, and says—"By virtue of my oath, I know of a conspiracy against the state, and such and such persons are engaged in it." Do you think his mere allegation shall justify you in a verdict of conviction? A witness coming on this table, of whatsoever description, whether the noble lord who has been examined, or the honourable judges on the bench, or Mr. James O'Brien, who shall declare upon oath that a man bought powder, ball, and arms, intending to kill another; this is not proveable conviction, the unlawful intention shall be attached by cogency of evidence, and the credit of the witness must stand strong and unimpeached.

The law means not, that infamous assertion or dirty ribaldry is to overthrow the character of a man; even in these imputations flung against the victim; there is fortunately something detergent, that cleanses the character it was destined to befoul.

In stating the law, gentleman, I have told you that the overt acts must be laid and proved by positive testimony of untainted witnesses, and in so saying I have only spoken the language of the most illustrious writers on the law of England. I should, perhaps, apologize to you for detaining your attention so long on these particular points, but that in the present disturbed state of the public mind, and in the abandonment of principle which it but too frequently produces, I think I cannot too strongly impress you with the purity of legal distinction, so that your souls shall not be barrowed with those torturing regrets which the return of reason would bring along with it, were you on the present occasion, for a moment to resign it to the subjection of your passions; for these, though sometimes amiable in their impetuosity, can never be dignified and just, but under the control of reason. The charge against the prisoner is two-fold—compassing and imagining the king's death, and adhering to the king's enemies. To be accurate on this head is not less my intention than it is my interest; for if I fall into errors, they will not escape the learned counsel who is to come after me, and whose detections will not fail to be made in the correct spirit of crown prosecution. Gentlemen, there are no fewer than thirteen overt acts, as described, to support the indictment; these, however, it is not necessary to recapitulate. The learned counsel for the crown has been perfectly candid and correct in saying, that if any of them support either species of treason charged in the indictment, it will be sufficient to attach the guilt. I do not complain that on the part of the crown it was not found expedient to

point out which act or acts went to support the indictment; neither will I complain, gentlemen, if you fix your attention particularly on the circumstance. Mr. Attorney-general has been pleased to make an observation, which drew a remark from my colleague, with whom I fully agree, that the atrocity of a charge should make no impression on you; it was the judgment of candour and liberality, and should be yours—nor though you should more than answer the high opinion I entertain of you, and though your hearts betray not the consoling confidence which your looks inspire, yet do not disdain to increase your stock of candour and liberality, from whatsoever source it flows; and though the abundance of my client's innocence may render him independent of its exertions, your country wants it all. You are not to suffer impressions of loyalty, or an enthusiastic love for the sacred person of the king to give your judgments the smallest bias. You are to decide from the evidence which you have heard, and if the atrocity of the charge were to have any influence with you, it should be that of rendering you more incredulous to the possibility of its truth. I confess, I cannot conceive a greater crime against civilized society, be the form of government what it may, whether monarchial, republican, or, I had almost said, despotical, than the attempt to destroy the life of the person holding the executive authority—the counsel for the crown cannot feel a greater abhorrence against it than I do; and happy am I, at this moment, that I can do justice to my principles, and the feelings of my heart without endangering the defence of my client, and that defence is, that your hearts would not feel more reluctant to the perpetration of the crimes with which he is charged, than the man who there stands at the bar of his country, waiting until you shall clear him from the foul and unmerited imputation—until your verdict, sounding life and honour to his senses, shall rescue him from the dreadful fascination of the informer's eye.

The overt acts in the charge against the prisoner are many, and all apparently of the same nature, but they, notwithstanding, admit of a very material distinction; this want of candour I attribute to the base imposition of the prosecutor on those who brought him forward. You find at the bottom of the charge a foundation-stone attempted to be laid by O'Brien; the deliberations of a society of United Irishmen; and on this are laid all the overt acts. I said the distinction was of moment, because it is endeavoured to be held forth to the public—to all Europe, that at a time like this of peril and of danger, there are, in one province alone, one hundred and eleven thousand of your countrymen combined for the purpose of destroying the king, and the tranquillity of the country, which so much depends on him; an assertion which you should consider of again and again before you give it any other existence than

it derives from the attainting breath of the informer, if nothing should induce that consideration but the name of Irishman, the honours of which you share; a name so foully, and, as I shall demonstrate, so falsely aspersed.

If you can say that one fact of O'Brien's testimony deserves belief, all that can from thence be inferred is, that a great combination of mind and will exist on some public subject. What says the written evidence on that subject? What are the obligations imposed by the test oath of the society of United Irishmen? Is it unjust to get rid of religious differences and distinction? Would to God it were possible! Is it an offence against the state to promote a full, free, and adequate representation of all the people of Ireland in parliament? If it be, the text is full of its own comment, it needs no comment of mine. As to the last clause, obliging to secrecy. Now, gentlemen of the jury, in the hearing of the Court, I submit to the opposite counsel this question, I will make my adversary my arbiter—Taking the test-oath as thus written, is there any thing of treason in it?—However objectionable it may be, it certainly is not treasonable: I admit there may be a colourable combination of words to conceal a real bad design, but to what evils would it not expose society, if, in this case, to suppose were to decide? An high legal authority thus speaks on this subject: "Strong indeed must the evidence be, which goes to prove that any man can mean by words any thing more than what is conveyed in their ordinary acceptation." If the test of any particular community were an open one; if, like the London Corresponding Society, it were to be openly published, then, indeed there might be a reason for not using words in their common application; but subject to no public discussion, at least not intended to be so, why should the proceedings of those men or the obligation by which they are connected, be expressed in the phraseology of studied concealment.

If men meet in secret, to talk over how best the French can invade this country; to what purpose is it that they take an engagement different in meaning? Common sense rejects the idea! Gentlemen, having stated these distinctions, I am led to the remaining divisions of the subject you are to consider. I admit, that because a man merely takes this obligation of union, it cannot prevent his becoming a traitor if he pleases; but the question for you to decide on would then be, whether every man who takes it must necessarily be a traitor? Independent of that engagement, have any superadded facts been proved against the prisoner? What is the evidence of O'Brien? What has he stated? Here, gentlemen, let me claim the benefits of that great privilege, which distinguishes trial by jury in this country from all the world. Twelve men, not emerging from the must and cobwebs of a study, abstracted from human

nature, or only acquainted with its extravagancies; but twelve men, conversant with life, and practised in those feelings which mark the common and necessary intercourse between man and man. Such are you, gentlemen; how, then, does Mr. O'Brien's tale hang together? Look to its commencement. He walks along Thomas-street, in the open day (a street not the least populous in this city), and is accosted by a man, who, without any preface, tells him, he'll be murdered before he goes half the street, unless he becomes a United Irishman! Do you think this a probable story? Suppose any of you, gentlemen, be a United Irishman or a freemason, or a friendly brother, and that you met me walking innocently along, just like Mr. O'Brien, and meaning no harm, would you say, "Stop, Mr. Curran, don't go farther, you'll be murdered before you go half the street, if you do not become a United Irishman, a free mason, or a friendly brother." Did you ever hear so coaxing an invitation to felony as this? Sweet Mr. James O'Brien! Come in and save your precious life, come in and take an oath, or you'll be murdered before you go half the street!—Do, sweetest, dearest Mr. James O'Brien, come in, and do not risk your valuable existence." What a loss had he been to his king, whom he loves so marvellously! Well, what does poor Mr. O'Brien do? Poor, dear man, he stands petrified with the magnitude of his danger; all his members refuse their office: he can neither run from the danger, nor call out for assistance; his tongue cleaves to his mouth; and his feet incorporate with the paving stones; it is in vain that his expressive eye silently implores protection of the passenger; he yields at length, as greater men have done, and resignedly submits to his fate; he then enters the house, and being led into a room, a parcel of men *make faces* at him; but mark the metamorphosis: well may it be said that "Miracles will never cease,"—he who feared to resist in open air, and in the face of the public, becomes a bravo when pent up in a room, and environed by sixteen men, and one is obliged to bar the door, while another swears him, which, after some resistance, is accordingly done, and poor Mr. O'Brien becomes a United Irishman, for no earthly purpose whatever, but merely to save his sweet life! But this is not all—the pill so bitter to the perciency of his loyal palate, must be washed down, and lest he should throw it off his stomach, he is filled up to the neck with beef and whiskey.

What further did they do? Mr. O'Brien, thus persecuted, abused and terrified, must have gone and lodged his sorrows in the sympathetic bosom of the major,* but to prevent him even this little solace, they made him drunk. The next evening they used him in the like barbarous manner, so that he was not only sworn against his will, but, poor man, he

* SIRA.

was made drunk against his inclination. Thus was he bewitched with united beef-steaks and whiskey, and against such potent assailants not even Mr. O'Brien could prevail.

Whether all this whiskey that he has been forced to drink has produced the effect or not, Mr. O'Brien's loyalty is better than his memory. In the spirit of loyalty he became prophetic, and told to lord Portarlington the circumstances relative to the intended attack on the ordnance stores full three weeks before he had obtained the information through mortal agency. Oh! honest James O'Brien!—honest James O'Brien! Let others vainly argue on logical truth and ethical falsehood, but if I can once fasten him to the ring of perjury, I will bait him at it, until his testimony shall fail of producing a verdict, although human nature were as vile and monstrous in you as she is in him! He has made a *mistake*! but surely no man's life is safe if such evidence were admissible; what argument can be founded on his testimony, when he swears he has perjured himself? I must not believe him at all, and by a paradoxical conclusion, suppose, against "the damnation" of his own testimony, that he is an *honest man*! [Another of the prisoner's counsel having here suggested something to Mr. Curran, he continued] My learned friend supposed me to be mistaken, and confounding the evidences of O'Brien and Clark, but I am not; I advert to what O'Brien said to lord Portarlington, respecting the attack on the arsenal.

Strongly as I feel my interest keep pace with that of my client, I would not defend him at the expence of truth; I seek not to make O'Brien worse than he is; whatever he may be, God Almighty convert his mind! May his reprobation—but I beg his pardon, let your verdict stamp that currency on his credit; it will have more force than any casual remarks of mine. How this contradiction in Mr. O'Brien's evidence occurred I am at no loss to understand. He started from the beginning, with an intention of informing against some person no matter against whom; and whether he ever saw the prisoner at the time, he gave the information to lord Portarlington as a question; but none, that he fabricated the story for the purpose of imposing on the honest zeal of the law officers of the crown.

Having now glanced at a part of this man's evidence, I do not mean to part with him entirely, I shall have occasion to visit him again; but before I do, let me, gentlemen, once more impress upon your minds the observation which my colleague applied to the laws of high treason, that if they are not explained on the Statute-book, they are explained on the hearts of all honest men; and, as St. Paul says, "though they know not the law, they obey the statutes thereof." The essence of the charge submitted to your consideration tends to the dissolution of the connexion between Ireland and Great Britain.

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I own, it is with much warmth and self-gratulation, that I feel this calumny answered by the attachment of every good man to the British constitution. I feel, I embrace its principles; and when I look on you, the proudest benefit of that constitution, I am relieved from the fears of advocacy, since I place my client under the influence of its sacred shade. This is not the idle sycophancy of words—It is not crying "Lord! Lord!" but doing "the will of my father who is in heaven." If my client were to be tried by a jury of Ludgate-hill shop-keepers, he would ere now be in his lodging. The law of England would not suffer a man to be cruelly butchered in a court of justice. The law of England recognizes the possibility of villains thirsting for the blood of their fellow-creatures; and the people of Ireland have no cause to be incredulous of the fact. Thus it is, that in England two witnesses are essential to the proof of high treason; and the poorest wretch that crawls on British ground, has this protection between him and those *vampyres* who crawl out of their graves in search of human blood. If there be but one witness, there is the less possibility of contradicting him—he the less fears any detection of his murderous tale, having only infernal communication between him and the author of all evil; and when on the table, which he makes the altar of his sacrifice, however common men may be affected at sight of the innocent victim, it cannot be supposed that the prompter of his perjury will instigate him to retribution—this is the law in England, and God forbid that Irishmen should so differ, in the estimation of the law, from Englishmen, that their blood is not equally worth preserving.

I do not, gentlemen, apply any part of this observation to you; you are Irishmen yourselves, and, I know you will act proudly and honestly. Why the law of England renders two witnesses necessary, and one witness insufficient, to take away the life of a man, on a charge of high-treason, is founded on the principle of common sense and common justice; for, unless the subject were guarded by this wise prevention, every wretch who could so pervert the powers of invention, as to trump up a tale of treason and conspiracy, would have it in his power to defraud the crown into the most abominable and afflicting acts of cruelty and oppression.

Gentlemen of the Jury, though from the evidence which has been adduced against the prisoner they have lost their value, yet, had they been necessary, I must tell you, that my client came forward under a disadvantage of great magnitude, the absence of two witnesses very material to his defence—I am not now at liberty to say, what, I am instructed, would have been proved by May, and Mr. Roberts.—Why is not Mr. Roberts here?—Recollect the admission of O'Brien, that he threatened to *settle* him, and you will cease to wonder at his absence, when, if he came, the dagger was

4 B

in preparation to be plunged into his heart. I said Mr. Roberts was absent; I correct myself—No! in effect he is here: I appeal to the heart of that obdurate man, what would have been his testimony if he had dared to venture a personal evidence on this trial?—Gracious God! Is a tyranny of this kind to be borne with, where law is said to exist? Shall the horrors which surround the informer, the ferocity of his countenance, and the terrors of his voice, cast such a wide and appalling influence, that none dare approach and save the victim which he marks for ignominy and death!

Now, gentlemen, be pleased to look to the rest of O'Brien's testimony: he tells you there are one hundred and eleven thousand men, in one province, added to ten thousand of the inhabitants of the metropolis, ready to assist the object of an invasion. What! gentlemen, do you think there are so many in one province—so many in your city, combined against their country? At such a time as this, do you think it a wise thing to say, on the evidence of the abominable O'Brien, that if the enemy were to invade this country, there are one hundred and eleven thousand men ready to run to his standard? But this is not the most appalling view of the question:—For its importance, and its novelty, this is the most unprecedented trial in the annals of this country. I recollect none bearing any affinity to it, save that of the unhappy wanderer, Jackson: and, premising that I mean not the smallest allusion to the conduct of public measures in this country, are you prepared, I ask you seriously, are you prepared to embark your respectable characters in the same bottom with this detestable informer? Are you ready on such evidence to take away, one by one, the lives of an hundred thousand men, by prosecutions in a court of justice? Are you prepared, when O'Brien shall come forward against ten thousand of your fellow-citizens, to assist him in digging the graves, which he has destined to receive them one by one? No! could your hearts yield for a moment to the suggestion, your own reflections would vindicate the justice of God, and the insulted character of man; you would fly from the secrets of your chamber, and take refuge in the multitude, from those "compunctious visitings," which meaner men could not look on without horror. Do not think I am speaking disrespectfully of you when I say that while an O'Brien may be found, it may be the lot of the proudest among you to be in the dock instead of the jury box; how then on such an occasion would any of you feel, if such evidence as has been heard this day were adduced against you?

The application affects you—you shrink from the imaginary situation—remember then the great mandate of your religion, and "do unto all men as you would they should do unto you." Why do you condescend to listen to me with such attention? Why so

anxious, if even from me any thing should fall tending to enlighten you on the present awful occasion?—It is, because, bound by the sacred obligations of an oath, your hearts will not allow you to forfeit it. Have you any doubt that it is the object of O'Brien to take down the prisoner for the reward that follows? Have you not seen with what more than instinctive keenness this blood-hound has pursued his victim?—how he has kept him in view from place to place, until he hunts him through the avenues of the court to where the unhappy man stands now, hopeless of all succour but that which your verdict shall afford. I have heard of assassination by sword, by pistol, and by dagger, but here is a wretch who would dip the evangelists in blood—if he thinks he has not sworn his victim to death, he is ready to swear, without mercy and without end; but oh! do not, I conjure you, suffer him to take an oath; the hand of the murderer should not pollute the purity of the gospel; if he will swear, let it be on the knife, the proper symbol of his profession! Gentlemen, I am reminded of the tissue of abomination, with which this deadly calumniator, this O'Brien, has endeavoured to load so large a portion of your adult countrymen. He charges one hundred thousand Irishmen with the deliberate cruelty of depriving their fellow-creatures of their eyes, tongues, and hands! Do not believe the infamous slander! If I were told that there was in Ireland one man who could so debase human nature, I should hesitate to believe that even O'Brien were he. I have heard the argument made use of, that, in cases of a very foul nature, witnesses cannot be found free from imputation; this admitted in its fullest extent, it does not follow that such evidence is to be accredited without other support. In such cases strong corroboration is necessary, and you would be the most helpless and unfortunate men in the world, if you were under the necessity of attending to the solitary testimony of such witnesses: In the present prosecution two witnesses have been examined; for the respectable character of lord Portarlington must not be polluted by a combination with O'Brien: if his lordship had told exactly the same story with O'Brien, it could not, however, be considered as corroborating O'Brien, who might as easily have uttered a falsehood to lord Portarlington as he did here; but how much more strongly must you feel yourselves bound to reject his evidence, when, appealing to his lordship, he is materially contradicted, and his perjury established?—and what did he tell lord Portarlington? or rather what has lord Portarlington told you?—that O'Brien did state to him the project of robbing the ordnance some time before he could possibly have known it himself. And it is material that he swore on the table that he did not know of the plot till his third meeting with the Societies, and lord Portarlington swears that he told it to him

on the first interview with him; there the contradiction of O'Brien by lord Portarlington is material, and the testimony of lord Portarlington may be put out of the case, except so far as it contradicts that of O'Brien.

Mr. Justice Chamberlain.—It is material, Mr. Curran, that lord Portarlington did not swear positively it was at the first interview, but that he was inclined to believe it was so.

Mr. Curran.—Your lordship will recollect that he said O'Brien did not say any thing of consequence at any of the other interviews; but, I put his lordship out of the question, so far as he does not contradict O'Brien, and he does so. If I am stating any thing through mistake, I would wish to be set right; but, lord Portarlington said he did not recollect any thing of importance at any subsequent meeting; and as far as he goes, he does beyond contradiction establish the false swearing of O'Brien. I am strictly right in stating the contradiction; so far as it can be compared with the testimony of O'Brien, it does weaken it; and therefore I will leave it there, and put lord Portarlington out of the question; that is, as if he had not been examined at all, but where he differs from the evidence given by O'Brien.

As to the witness Clark, after all he has sworn, you cannot but be satisfied he has not said a single word materially against the prisoner; he has not given any confirmatory evidence in support of any one overt act laid in the indictment. You have them upon your minds, he has not said one word as to the various meetings, levying money, or sending persons to France; and, therefore, I do warn you against giving it that attention for which it has been introduced. He does not make a second witness. Gentlemen, in alluding to the evidence of Lord Portarlington, which I have already mentioned, I was bound to make some observations. On the evidence of Clark I am also obliged to do the same, because he has endeavoured to prejudice your minds by an endeavour to slide in evidence of what does not by any means come within this case; that is a malignant endeavour, to impute an horrid transaction, the murder of a man of the name of Thompson, to the prisoner at the bar; but I do conjure you to consider what motives there can be for insinuations of this sort, and why such a transaction, so remote from the case before you, should be endeavoured to be impressed on your minds. Gentlemen, I am not blinking the question, I come boldly up to it; and I ask you, in the presence of the Court and of your God, is there one word of evidence that bears the shadow of such a charge as the murder of that unfortunate man, to the prisoner at the bar? Is there one word to show how he died, whether by force, or by any other means? Is there a word how he came to his end? Is there a word to bring a shadow of suspicion that can be attached to the prisoner? There is not the most remote evi-

dence to connect the fate of Thompson with the present case, and nothing could show the miserable paucity of his evidence, more than seeking to support it on what did not at all relate to the charge. Gentlemen, my client has been deprived of the benefit of a witness, May (you have heard of it), who, had the trial been postponed, might have been able to attend; we have not been able to examine him, but you may guess what he would have said; he would have discredited the informer O'Brien. The evidence of O'Brien ought to be supported by collateral circumstances. It is not; and though Roberts is not here, yet you may conjecture what he would have said. But, gentlemen, I have examined five witnesses, and it does seem as if there had been some providential interference carried on in bringing five witnesses to contradict O'Brien in his testimony, as to direct matters of fact, if his testimony could be put in competition with direct positive evidence. O'Brien said, he knew nothing of ordering back any money to Margaret Moore; he denied that fact. The woman was examined, what did she say on the table, in the presence of O'Brien? That "an order was made, and the money refunded, after the magistrate had abused him for his conduct." What would you think of your servant, if you found him committing such perjury, would you believe him? What do you think of this fact? O'Brien denies he knew any thing of the money being refunded! what does Mrs. Moore say? That after the magistrate had abused him for his conduct, the money was refunded, and that "she and O'Brien walked down stairs together!" Is this an accidental trip; a little stumble of conscience; or, is it not downright, wilful perjury? What said Mr. Clark? I laid the foundation of the evidence by asking O'Brien, did you ever pass for a revenue officer? I call, gentlemen, on your knowledge of the human character, and of human life, what was the conduct of the man? Was it what you would have acted, if you had been called on in a court of justice? Did he answer me candidly? Do you remember his manner? "Not, sir, that I remember; it could not be when I was sober." Did you do it at all? What was the answer—"I might, sir, have done it; but I must have been drunk. I never did any thing dishonest." Why did he answer thus? Because he did imagine he would have been opposed in his testimony:

He not only added perjury to his prevarication, but he added robbery to both. See now in Dublin there are at this moment thousands and tens of thousands of your fellow citizens, anxiously by, waiting to know if you will convict the prisoner on the evidence of a wilful and corrupt perjurer? Whether they are, each in his turn, to feel the fatal effects of his condemnation, or whether they are to find protection in the laws from the machinations of the informer? [Mr. Curran having been reminded to observe on the recipe for coining],

No! continued he, let him keep his *coming* for himself; it will not pass in common with other pieces—it suits him well, and is the proper emblem of his conscience, *copper-washed*.

What has O'Brien said? "I never retémber that I did pretend to be a *révénue* officer; but I remember there was a man said something about whiskey; and I remember, I threatened to complain, and he was a little frightened, and he gave me three and three-pence!"—I asked him, "Did his wife give you any thing?"—"There was three and three-pence between them." "Who gave you the money?" "It was all I got from both of them."—Gentlemen, would you let such a fellow as this into your house as a servant, under the impressions which his evidence must make on your minds? Suppose one of you wanted a servant, and went to the other to get one; and suppose you heard that he personated a revenue officer; that he had threatened to become an informer against persons not having licences, in order to extort money to compromise the actions, would you take him as a servant?

If you would not take his services in exchange for wages, will you take his perjury in exchange for the life of a fellow creature?—How will you feel, if the assignats of such evidence pass current for human blood? How will you bear the serrated and iron fangs of remorse, gnawing at your hearts, if, in the moment of abandonment, you suffer the victim to be massacred even in our arms. But has his perjury stopped here? What said the innocent countryman, Patrick Cavanagh?—Pursuing the even tenor of his way, in the paths of honest industry, he is in the act of fulfilling the decree of his Maker, he is earning his bread by the sweat of his brow; when this villain, less pure than the arch-fiend who brought this sentence of laborious action on mankind, enters the habitation of peace and humble industry, and, not content with dipping his tongue in perjury and blood, robs the poor man of two guineas! Can you wonder that he crept into the whole of the multitude when the witness would have developed him? Do you wonder that he endeavoured to shun your eyes?

At this moment even the bold and daring villainy of O'Brien stood abashed; he saw the eye of heaven in that of an innocent and injured man; perhaps the feeling, was consummated by a glance from the dock—his heart bore testimony to his guilt, and he fled for the same! Gracious God! have you been so soiled in the vile intercourse, that you will give him a degree of credit, which you will deny to the candid and untainted evidence of so many honest men? But I have not done with him yet—while an atom of his vileness hangs together, I will separate it, lest you should chance to be taken by it. Was there a human creature brought forward to say, he is any other than a villain? Did his counsel ven-

ture to ask our witnesses, why they discredited him? Did he dare to ask on what they established their assertions? No! by this time it is probable Mr. O'Brien is sick of investigation. You find him coiling himself in the scaly circles of his cautious perjury, making anticipated battle against any one who should appear against him; but you see him sinking before the proof.

Do you feel, gentlemen, that I have been wantonly aspersing this man's character? Is he not a perjurer, a swindler? and that he is not a murderer, will depend on you. He assumes the character of a king's officer, to rob the king's people of their money, and afterwards, when their property falls him, he seeks to rob them of their lives! What say you to his habitual fellowship with baseness and fraud? He gives a recipe instructing to felony, and counterfeiting the king's coin, and when questioned about it, what is his answer? why truly, that it was "only a light easy way of getting money; only a little bit of a humbug." Good God! I ask you, has it ever come across you to meet with such a consolation of infamy!

Besides his perjury Clark had nothing to say, scarcely ground to turn on. He swears he was not in the court yesterday—what then? why, he has only perjured himself! well, call little skittish up again? why, it was but a mistake! a little puzzled or so, and not being a lawyer, he could not tell whether he was in court or not! Mr. Clark is a much better evidence than my lord Potterlington; his lordship, in the improprieties of truth, bore a single testimony; while Clark, wisely providing against contingencies, swore at both sides of the gutter, but the lesser perjurer is almost forgotten in the greater. No fewer than five perjuries are established against the loyal Mr. O'Brien, who has been "sworn to every honest man." If indicted on any one of these, I must tell you, gentlemen, that he could not be sworn in a court of justice; on the testimony of five witnesses, on his own testimony, he stands indicted before you; and gentlemen, you must refuse him that credit, which never ought to be squandered on such baseness and profligacy. The present cause takes in the entire character of your country, which may suffer in the eyes of all Europe by your verdict. This is the first prosecution of the kind brought forward to view. It is the great experiment of the informers of Ireland, to ascertain how far they can carry on a traffic in human blood! This cannibal informer, this demon, O'Brien, greedy after human gore, has fifteen other victims in reserve, if, from your verdict, he receives the unhappy man at the bar! Fifteen more of your fellow citizens are to be tried on his evidence! Be you then their saviours, let your verdict snatch them from his ravaging maw, and interpose between yourselves and endless remorse!

I know, gentlemen, I should but insult

you, if I were to apologize for detaining you thus long; if I have apology to make to any person, it is to my client, for thus delaying his acquittal. Sweet is the recollection of having done justice, in that hour, when the hand of death presses on the human heart! Sweet is the hope which it gives birth to! From you I demand that justice for my client, your innocent and unfortunate fellow subject at the bar, and may you have for it a more lasting reward than the perishable crown we read of, which the ancients placed on the brow of him, who saved in battle, the life of a fellow citizen.

If you should ever be assailed by the hand of the informer, may you find an all-powerful refuge in the example which you shall see this day; earnestly do I pray, that you may never experience what it is to count the tedious hours in captivity, pining in the damps and gloom of the dungeon, while the wicked one is going about at large, seeking whom he may devour. There is an other than a human tribunal, where the best of us will have occasion to look back on the little good we have done. In that awful trial, oh! may your verdict this day assure your hopes, and give you strength and consolation in the presence of an ADJUDGING GOD.

REPLY.

Mr. Solicitor General.—My Lords and Gentlemen of the Jury:—I feel the responsibility of the situation in which I am placed, when I rise to address a few observations to you, upon a case of such magnitude and so peculiarly circumstanced as the present; at the same time that I have in view the necessary and important duty I am to discharge, I am also anxious, and extremely so from a regard to your lordship's health, exhausted as you must be, not to lead you much farther into midnight, before your wise and learned charge shall assist the jury, while they shall yet possess clear faculties and vigour of mind to discuss the body of evidence which they have heard, and upon which they are bound to decide.

By the course which the counsel for the prisoner have taken, I am much relieved, because it has been fairly acknowledged that if the evidence which has been adduced is credible, there is no difficulty in point of law; and they admit the evidence is competent to convict, if the witnesses are such as you ought to credit. Therefore, gentlemen, it is not necessary for me now to labour that part of the case, which if it rested on the statement of the prisoner's case, might possibly have involved some argument, and perhaps some difficulty, if it had been complicated by a discussion of those topics which were enlarged upon by the counsel who stated the case of the prisoner.

Gentlemen, whatever may be the event of this case, my first anxiety is for the due administration of justice, and I do admit, that

unless you find yourselves impressed with cogent and powerful conclusive impressions from the evidence, you are bound to acquit the prisoner; and if I were to inculcate a contrary opinion, or to enforce any other doctrine, I should not be an advocate actuated by the spirit of the British law, I should deprecate that reverence which is due to a trial by jury, and should be deemed unworthy of your attention. Whatever the anxious wish of any man hearing this case may be; however great his zeal for the acquittal of the prisoner, whatever his political sentiments may be, unless he is regardless of the public safety, he must think, that the servants of the crown would be unjustifiable, and that every principle of active justice was abandoned, if this case had not been brought forward. The charge against the prisoner has not been hastily preferred; however slowly it may have proceeded, and been embarrassed by delay, and in the progress of the case it has appeared that every possible advantage has been taken by putting off the trial, to traverse every corner of the country to hunt for witnesses, to vilify the characters of our witnesses, without being able to combat the truth of those facts, which if not well founded would have been easily refuted; or the great body of evidence which substantiates the charge with an unrefuted consistency which is inseparable from truth, and which, where circumstances are so numerous and so connected, could never belong to a fabricated tale.

Gentlemen, the charge is of a heavy kind; it imputes to the prisoner, the most enormous guilt; but this I am warranted to tell you, that the prisoner having under the peculiar advantage of this species of trial, been long since furnished with a copy of the indictment, has had every advantage of knowing every overt act laid to his charge, and of course has had a long previous opportunity to prepare for his defence; with an advantage peculiar in this species of indictment, unknown in the law of any other country but that of Britain, where the benign genius of the constitution affords a ten-fold shield for the protection of the innocent, behind which the abomination of guilt has oftentimes taken shelter, and triumphs in impunity.

I felt a pleasure at that part of the learned gentleman's argument, where he spoke with assumed rapturous expression, upon the laws and constitution under which we live, when contrasted with others that false popularity had dared to applaud. But I must confess, I felt regret at another part of the same gentleman's statement, where he drew an inviolable distinction, between the law of England, and that of Ireland in regulating the trials for high treason. It will not be thought foreign, I trust, from the duty I am discharging, to rescue the minds of the jury from any seduction flowing from the arguments of that nature, for I will be bold to say that I will satisfy the mind of every man who hears me, say

even that of the prisoner, that the law under which he is tried, and the conduct of the judges towards him, have afforded, and do now afford him, the highest advantages that have ever been extended to any man standing in similar circumstances, in any quarter of the globe.

Gentlemen, the law upon which this indictment has been framed, is the ancient and well known statute, 25 Edw. 3rd: it never has been changed from that day to this hour. It has been truly said to be a barrier against vague accusations, for it requires that a definite and specific charge descriptive of the offence and correspondent with the statute, shall be set forth in the indictment, and such charge must be established upon proveable grounds; for, before it can affect the life of any man indicted for compassing the death of the king, *he must be attainted of open deed by men of his condition*, and those deeds must be stated and proved.

As to the difference between the laws subsequently enacted in Great Britain and Ireland, it has been said, that the prisoner was not furnished with a copy of the panel, and of the witnesses for the prosecution, two of whom at least were indispensably necessary, by the law of England, for the purpose of conviction. The law which was alluded to as existing in England, was a law enacted in the last century under very particular circumstances, upon the history of which I do not desire too particularly to animadvert, with a view to censure those who in framing it, departed from some of the first principles of the law of evidence, which is calculated for the purpose of investigation and the ascertainment of truth. The subject has been remarked upon by the ablest judges who have commented upon the English law; under their opinion the law of Ireland is more reconcilable to those invariable rules which ought to govern and prevail, however convenient it might have been to some active legislators, who had the framing of the English statute, by a departure from those rules to have embarrassed the trials which were impending at that day, over the heads of their nearest connexions. The great crown writers who have existed since—and none of them were greater than sir Michael Foster—have doubted the propriety of that English statute, upon which he has animadverted with that becoming freedom and authority which probably operated upon the wisdom of the legislature of Ireland, when it enacted our law in the last reign. You must be aware, gentlemen, that the secret machinations of treason are such as to render proof extremely difficult, and it is obvious, that it can seldom be derived from any quarter, save the persons employed, and participating in the designs; and here give me leave to remark, that the taunting expression of informer, which you have so often heard from counsel, with a view to put down all evidence derived through the medium of such discovery, might

have been well spared. The wisdom of the law has not only received but decided upon such evidence from early times; the principle becomes more approved by daily experience; but where the most horrid conspiracies have been formed under a bond of midnight secrecy, where there is evidence unquestioned, as in this case, that they have been acted upon by thousands parading through your streets, under the pretence of a funeral, the evidence speaks trumpet-tongued to your conviction.

It is said, this is the first trial upon such a subject, of late times, save one. If a gentleman of even less experience had said so, I should wonder where he had lived. The learned gentleman alluded only to the wanderer, Jackson,* as he called him; has he forgot Weldon,† O'Connor,‡ Hart, and others, for whom the learned gentleman has been counsel, and who have been tried and convicted of treason of the same kind, under the same confederated system, which has not only been proved to exist, but to have raged in outrage through the land.

Gentlemen, I have been led into these observations upon the law and mode of trial, and the allusion to cases that have lately occurred, in consequence of the observations that fell from the counsel who last spoke; he has not only justified these observations, but provoked them, and when any man shall depreciate and arraign that excellent law by which we live, and by the observance of which every social comfort is preserved, I will endeavour to rescue my countrymen from the mischievous effects of such a deception.—I will rescue the law and the administration of justice in this country from so unfounded an imputation; because I am anxious that the people should know they are entitled to and enjoy the protection and benefit of as wholesome laws as the people of any other country in the universe. It is for the purpose of preserving to them these valuable rights, in despite of those who are combined to destroy them, that this and other trials have been directed by those whose duty it is to provide for the public safety, and if they had not brought them forward they would have most justly been execrated and reviled by all good men; they feel and are conscious of the painful responsibility of their situations.

Oh, conditionem miseram non modo administrandæ verum etiam conservandæ reipublicæ!

But, gentlemen, I shall come now to that which is my more immediate duty upon this trial, and I trust, I shall address you without

* See his case, *anté*, vol. 25, p. 783.

† See the trials of the Defenders, p. 225 of this volume.

‡ He was tried, and convicted of high treason, at Naas on Tuesday September 1st, 1795, but I have never seen any report of the trial.

any other impulse upon my mind, than that which a sense of my duty excites. True it is, gentlemen, that the principal part of the evidence does rest upon the testimony of one witness, O'Brien : and true it is, he has been strongly impeached in point of general character ; but I shall show you, by inferences from the evidence of O'Brien himself, and the intrinsic nature and weight of it, and the corroborating circumstances which are proved beyond controversy, that it is impossible that this can be a fabricated tale.

You already know that the principal overt acts are laid in the indictment, of which the prisoner has long since had a copy that has enabled him to prepare for his defence. What is the nature of the evidence ? It commenced with facts, the earliest date of which is the 25th of April last. A series of meetings were had, many of them numerous, and consisting of persons particularly named ; the conduct of the prisoner at each of them was described under such circumstances as might be accounted for or contradicted, if the testimony of the witness were not founded in fact ; for it appears most manifestly, not only from the indictment but from the whole course of the evidence, that the prisoner was aware that the holding of those meetings and the places where they were held, would be brought in charge against him. For four or five successive Sundays, the party met in numbers. At an early stage of the business, and after that O'Brien was made acquainted with the conspiracy, and that it was in process, the witness goes—to whom ? why, to such a man as lord Portarlington, and he discloses not only the confederacy, but the whole engagement for acts to be done, and that are proved and notoriously known to have been done since, such as the funeral procession and other matters : if the witness had embarked in a dark conspiracy against the prisoner's life, was that the character he would have resorted to ? Lord Portarlington has told you that he came to him repeatedly, that he gave him the previous intelligence of what has since happened. If he were not conscious of giving useful and well grounded information, would the witness have applied to a man of such honour, worth and truth, as my lord Portarlington ? If he was telling falsehoods and a series of facts not likely to arise, to corroborate him in every stage, would he have foretold the meetings to be had, the places of meeting in the midst of the metropolis, and other facts so obviously the means of detecting the falsehood of them if unfounded ? would he have gone to such a man ? and would lord Portarlington have handed over the evidence and witness to the executive power if he conceived them false ? But it is said, lord Portarlington differs from O'Brien, for that O'Brien resorted to his lordship at an early period, and disclosed then, as a fact, what was not thought of by the party, and did not happen till some time afterwards ; namely, the intention and

plan to surprise the arsenal, which was a plan resolved on some days after ; and this inconsistency is relied on. But you will recollect, that lord Portarlington could not be precise as to the period of time when O'Brien mentioned the matter to him ; whether at his first, second, or third interview ; and it cannot escape observation, that as the places of meeting were pointed out, and when to be held, according to previous determination, that the business to be transacted might probably be previously communicated to the witness, who appears to have been placed in a confidential situation ; and as to the meetings having been held accordingly, and the prisoner's having partaken in them as a leading character, and as to his having been the most active person in arranging that funeral which was planned at those meetings, and that procession which terrified all Dublin by its numbers, and was equally foretold, they stand upon the same bottom, they were capable of equal disproof by multitudes, if not true ; but they stand not only unrefuted but corroborated, so as not to leave a hinge to hang a doubt on : nor in fact, was the inconsistency established by the evidence. The witness, O'Brien, was only permitted to state his having made disclosures to lord Portarlington at different times, but you remember, that as to the periods of time when he conversed with lord Portarlington, or the particular conversation, the first witness, O'Brien, did not, nor would be permitted to relate them ; because those conversations were not in the presence of the prisoner, they were not admissible evidence, and the witness was not allowed to detail them fully. And indeed, with regard to this alleged want of accuracy in the periods of time which is endeavoured to be collected from the testimony of the witnesses, it is to be observed, that lord Portarlington himself was not able to ascertain in what particular period of time he heard one part of the information, and in what period he heard another, and that he spoke in that respect only upon belief. But the counsel for the prisoner did not venture to ask his lordship, whether O'Brien told a consistent story. He gave an account of transactions which passed in the presence of a number of persons, with any one of whom he might have been confronted, if he were not faithful in the account he gave this day. Nay, it was competent to the counsel for the prisoner to ask lord Portarlington, whether the witness appeared to him to be consistent on the trial with what he originally told, and whether he had any doubt of his veracity resting on his mind ?—No, that was not done ; nor did lord Portarlington of himself throw out any imputation to shake the credit of the witness ; and it was his lordship's duty, if he felt any thing of that kind in his bosom, to have disclosed it. I have alluded to the circumstances of the funeral : the witness told lord Portarlington, that on the then next Sunday there was to be a funeral, at which 10,000 were to at-

and, for the purpose of striking terror, and giving confidence to traitors. It appears to have taken place; it was planned by Finney, from whom the witness received the notice; it was arranged by him in the manner related by the witness. It is notorious; cannot the prisoner call one man in Dublin, or one man of the 10,000 to disprove the active efforts with which he was charged on that occasion, and that therefore the witness was not to be believed upon his oath? Not a man is produced, and therefore you must infer, that what he has sworn is true. The witness goes to meeting after meeting; he points out the different houses at which they are held; he details the overt acts which are stated in the indictment, and which were planned at those particular places; the waiters, the women, and others belonging to the houses are all stated and proved to have had knowledge of the meetings, and that they were all held with mysterious secrecy, and no one admitted who had not the pass word; those persons are not charged with the criminality, and every one of them is capable of being adduced, examined, and of disproving what is not true. But there is not one to disprove the fact. What more appears? the watch words and pass words are given, and the party is brought at last to the sign of St. Patrick, in Meath-street, from whence the prisoner narrowly escaped with the papers, on the alarm of the magistrate's arriving; admittance is found by the magistrate, by the pass word, St. Patrick, as previously told by the witness, the waiter and people belonging to the house refusing admittance, until the pass word given by the magistrate. The prisoner fled; he carried off the papers; he boasted of it the next day to another witness, Clark; but the remaining part of the meeting, consisting of the conspirators, previously named by the witness, are taken in the very room from whence the prisoner had fled. If it were an innocent meeting—if there were no conspiracy—if no mischief were hatching, what need of mystery—why the necessity for being secret?—why the watch word, agreed upon as a signal? but Finney, the prisoner, was not found! why? because, the witness told you, he made his escape. If innocent, why did he fly? If he did not fly and make his escape with the books and papers, why not prove the fact, and contradict the witness by the waiter and inhabitants of the house? There are some things above the power of observation, and such is the not producing of these witnesses, in their power.

Finney, the prisoner, is taken up the next day; and some little merit is due to the counsel for the crown, when having the informations of a deceased man, sergeant Thompson, who has been since murdered, and whose informations might, under the late law, have been given in evidence, to avoid all cavil of objection they have not been pressed, we did not produce them. Therefore you are to put

them altogether out of your minds. But the gentlemen might have called for them, if they meant to refute Clark (the other soldier, who was examined) as to the confession of Finney, at which both were present. Finney is stated by Clark to have been in a tap room, at a public house, at Tuile's, upon the 31st of May, the day subsequent to his flight; and if that were not the fact, it was capable of disproof. It does happen, however, that he there boasted of his escape; after some other conversation with the witness, in private, he tenders an oath, exactly going to establish one of the overt acts, that of becoming an United Irishman, with an intention, of which no man can now have a doubt, namely, to assist the foreign enemy, when they should land, and of giving them information, and to induce them to come here. This will be considered by you as strong evidence to support that part of the indictment which charges the prisoner with adhering to the enemies of the king.

What more appears? The prisoner gave Clark the Constitution, containing the test of the society, which has been read. I abstain from commenting unnecessarily upon that which may have been either on this or any other occasion said in vindication of this notorious bond of conspiracy and treason. It is foreign from my duty at present, by a waste of time, to go into that discussion. But even if it were as innocent upon the face of it, as the first counsel for the prisoner argued it to be, yet if it were intended and made use of for the wicked purpose of involving the country in ruin, desolation and blood, and of inviting all the horrors of invasion, it is as criminal as if the wicked design were expressed in the very body of it, in characters of blood. If the conspiracy charged against the prisoner had succeeded in their designs, and that excellent and humane law which affords at this instant so patient and fair a trial to the prisoner, were overturned, the guillotine would have long since superseded the cool investigation of a jury.

I say then, gentlemen, if you are convinced that this paper was used for such treasonable and wicked purposes, it will be evidence in support of the indictment. You cannot suppose that such designs would be disclosed in express terms; guilt is more cautious in its nature. Acts apparently innocent in themselves may be explained by circumstances, be evinced to be of the most dangerous tendency. Lord Preston took boat at Surrey stairs, an act apparently innocent; but it appearing to have been done with an intention of going to France to invite an invasion of England, it was determined to be an overt act of treason.

Gentlemen, I have now to combat some observations which have been made upon the evidence of Clark. He did undoubtedly say, that he was not in court yesterday, and it has been observed, that if he were convicted of having said so falsely, he would be rendered an incompetent witness; and therefore, it was

said, you ought to consider him as convicted of perjury.

I admit, that if he has been guilty of wilful and corrupt perjury, his testimony ought to be altogether rejected:—that is an admission full and extensive enough for the gentlemen concerned for the prisoner. But is it possible to conceive, that the man meant to be guilty of wilful and corrupt perjury in concealing a fact which was capable of proof by an hundred witnesses, all around him, in the very court where we are now assembled, and in presence of the same persons who could confront him at the instant? Was it a fact essential to the case, or could it in any degree affect the witness or the case, let him answer as he would?—No deception could be meant by it—it could therefore be only the misrecollection of a moment. I leave it to your judgment—could it be more?—He attended many days of this commission—he was absent upon others; nothing was so natural as to have confounded his recollection as to both. I rely upon it that his general veracity is not impeached, and that he has corroborated the other witness in the most important part of his evidence. Finney boasts of his escape, and those concerned for him not bringing forward evidence to disprove that account is strong to show you that it is incapable of disproof—I do allow that O'Brien has been impeached in general character—but with regard to what? Certainly not as to one substantial feature of this case—and who are the witnesses to impeach his character, or to swear to collateral facts which he has denied?—Why, they are all of them persons with whom he has been at variance, and who may well be considered to be actuated by resentment. Gentlemen complain that they were not prepared as they might to impeach O'Brien, not knowing he was to be the witness, and yet by means of putting off the trial from week to week, they have had leisure to ransack the country, and every part of it where he has lived for a day; they have hunted through every village and family where he has ever been, not an alehouse has been left unsearched, and not a gossiping old woman with whom he has had an antiquated and stale gallantry, that has not been resorted to, and brought forward as a witness to affect his credit; showing to demonstration, that they were apprized, and that too for a length of time, that he was to appear against the prisoner as a principal witness upon the trial. But it is observable, that Gray and Roberts were sworn to be material witnesses for the prisoner, and the counsel have not dared to examine them when they found they attended. Then, gentlemen, ask yourselves, were these indifferent witnesses, uninfluenced by prejudice or passion? Do you not see, that they are every one inflamed and hurried on by resentment?

Gentlemen, as to the charge of coining, I shall not say one word upon it. Though
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much stress was laid upon it by the gentlemen of the other side, it seemed to me to be an idle and ridiculous sort of jesting unworthy of your attention. This then is the great body of evidence on which you are to deliberate and decide, and I would rather direct your thoughts to one great comprehensive view of it, than to fritter away your attention by too minute observations, that might weary and distract.

One thing however I must again take notice of, that in the essential features of the case, and of O'Brien's evidence, not a particle of evidence has been brought forward to controvert it, and he has been corroborated by Clark, Atkinson, and lord Portarlington in most branches of it, and the intrinsic weight of the evidence itself, has been beyond the attempt of the advocate to combat with, though he has with his usual address attacked the witnesses character in every vulnerable point. Gentlemen, we can not expect the best moral characters amongst conspirators, even though they have virtue enough left to revolt from their treason; but when a man discloses and confesses his own guilt, he has gained one step towards your belief. But, gentlemen, such a tale as this no man could have had the boldness to fabricate, and if he had, the variety of circumstances, the variety of places, times and persons, of which it is made up, must have rendered it so vulnerable were it false, that the finger of detection would have exposed its nakedness, and smote it to the earth in the course of so long a trial.

Gentlemen, this is a case of great importance, and I am sure you will do your duty to yourselves, to your God, and to your country. We must endeavour to restore the people of the land to their former comforts in life. Government had been much to blame, if this prosecution had not been brought forward, but let the consequences be what they may, you are seriously to consider the evidence. If you have well weighed the evidence, it will carry its just weight with it, and if you find that there are still doubts remaining unsatisfied in your minds, which prevent your feeling a just, a fair, and a reasonable conviction of the prisoner, what I urge will have no avail, and the Court will tell you your duty.

SUMMING UP.

Mr. Justice Chamberlain.—Gentlemen of the Jury; The crime charged against the prisoner is high-treason—a crime of the most atrocious nature, and when it is to be effected by the introduction of a powerful foreign enemy, is an attempt to overthrow the rights and liberty of every individual in the community, and to cover the land with blood and devastation. But in proportion as the crime is enormous (as has been properly stated by Mr. M'Nally), and as each individual may be affected by it, so those who are to sit in judgment upon the fact, are to watch them-

selves, and be most cautious,—more than in any other case,—that the accusation be proved.

The statute which has been mentioned, 25 Edw. 3rd, I admit is in several respects a declaratory act, as the prisoners counsel have argued; it was made for the purpose of preventing men from being entrapped by general charges of high-treason: *dolus versatur in generalibus*, and therefore that act expressly specified and ascertained, what was to be deemed treason;—and it went farther, and ordered that the overt act, which I understand to be the means of executing the treason, should be plainly set forth, that the person accused should know fully what he is to defend himself against.—And it ordained, that these overt acts shall be *proveably* or satisfactorily made out in evidence.

Gentlemen, the prisoner at the bar is indicted for two species of treasons, as ascertained by the statute;—one is, compassing and imagining the death of the king; the other is, adhering to the king's enemies.

With regard to the charge of compassing and imagining the death of the king, it is determined, that any act, which directly or indirectly brings the life of the king into danger, is within this branch of the statute; as to dethrone, or imprison him. So to invite foreigners to invade the country is considered as a probable mean of bringing the king's life into danger.—Adhering to the king's enemies is also expounded to be an overt act of the same species, and justly so, because the probable consequence may be, that he, whose duty it is to resist the enemy, may fall into their hands, the natural consequence of which would be his death.

But suppose the first count in the indictment had been omitted, we are of opinion, that the justice of this case does not require that you should go farther than considering the charge of adhering to the king's enemies; that offence is intelligible by every man of plain reason. It consists in doing any act to promote their interests, and with that intent, no matter whether the attempt is abortive or not.—Lord Preston's case has been stated at the bar;—he was indicted for high-treason, and it appeared he had formed a plan to invite the French to invade England;—that he had embarked for France with that plan in his possession: he was taken on the river Thames, and his attempt to go to France, and lay his plan before the French government, though prevented, was held to be an adhering to the king's enemies. That case was decided by Lord Holt, one of the greatest judges who presided in Westminster-hall.

In the case of Dr. Hensey, nearer our own days, the same doctrine was recognized. He was tried by Lord Mansfield, one of the greatest luminaries of the law assisted by some of the ablest judges:—Hensey wrote a letter intended for the enemies of the king, and though it was intercepted in its progress,

it was considered an adhering to the king's enemies.

So in the case of Jackson, who was lately tried in this country, there was the same determination. He drew up a paper, purporting to be a state of this kingdom, and caused it to be put into the post-office, for the purpose of forwarding it to France; it was intercepted in the post-office, and the Court of King's Bench unanimously determined, that the statement so drawn up and put into the post office, with the intent of its being forwarded to the French, then at war with us, though intercepted, was an act of adhering to the king's enemies.

And, gentlemen, it is plain sense and good policy, that the law should be so; for the act of the party is complete, and if we were to wait for the event, it might be idle to talk of punishment—because the attempt might be attended with success, and you might be rendered unable to decide upon the case.

As to the indictment, there are many overt acts laid, but it would only perplex, minutely to state each of them. In our opinion, those parts of the indictment which state the deliberations had to send persons into France, at a future day, are not established; and upon this ground, we conceive, that the third, fourth, fifth and sixth overt acts are not proved. But as to the others, you are to consider the evidence.

The first overt act is, that the prisoner did associate himself with other false traitors, under the denomination of United Irishmen, with design and for the end (which you will all along consider as of the essence of the case) of adhering to the persons exercising the powers of government in France. The second overt act is the same as the first in different words. There is another, stating an attempt to seize upon the ordnance stores. Another, that the prisoner and others, to the amount of 48 in the whole, divided themselves into splits; all the subsequent overt acts, showing the proceedings and designs of that society, named in the first overt act laid in the indictment.

Gentlemen, in support of this indictment, James O'Brien has been produced; but before I state a tittle of his evidence, I must give you this caution, namely, that if you shall be of opinion, that he has wilfully and deliberately perjured himself, even as to a collateral fact, upon this trial, you are to reject his testimony, unless you find, that it has been so corroborated by circumstances, or other unimpeached evidence, as to be irresistible. You are to ask this question—Whether, if he were indicted before you for wilful and corrupt perjury in answer to any question asked him this day, you would convict him?—And if you are of opinion, that you would convict him, you ought not, in my opinion, to convict the prisoner upon his unsupported testimony. And however strongly you may suspect the prisoner, yet it were better that one hundred

guilty persons should escape, than make a precedent by which one innocent man might be found guilty upon such testimony. The evidence of a witness who perjures himself wilfully, even as to a collateral fact, is to be regarded still less than that of an approver, who makes a candid and clear confession of every fact in the hearing of a jury; such a recital may claim credit. But if a man, in any one instance upon a trial, shall commit wilful and corrupt perjury, I should be glad to know, whether it will not cast a doubt upon his evidence as to the main fact, which he has been brought to prove?—And if there be a doubt, I take it to be a clear maxim, founded in humanity as well as law, that you must acquit the prisoner. For in that case the impression made upon your minds can at most create a strong suspicion of the prisoner's guilt; but that is not sufficient to convict him.

Gentlemen, having stated this caution, I shall repeat to you, what this witness swore [Here his lordship recapitulated the evidence, and observed upon the oath of the United Irishmen to the following effect] :—To call upon all the people in the manner this obligation endeavours to do, is of a most alarming nature; upon the face of it, it is a felony to administer or to take such an oath, and it is absurd to suppose that any rational creature can think it binding.—Suppose a man swore he would not pay his debts, is he not still bound by the legal, as well as the moral obligation to pay them.—Suppose he swore to commit perjury, shall he be bound by such an oath? Though a man be sworn to commit murder, is he not bound to abstain from committing such a crime?—The United Irishman is sworn not to give evidence against a brother;—but the law says, that when produced as a witness, he shall swear to disclose the truth.—So that an United Irishman, when he enters into the association, binds himself by the solemnity of an oath to commit perjury.

[After recapitulating the evidence and remarking upon the oath, his lordship proceeded :—]

As to the credit due to O'Brien, it is material to observe, that Mr. Higgins is not produced, though it was to him he gave the first information. The witness said, he was told of the funeral upon Sunday the 30th of April, and yet he had mentioned it upon the 28th, two days before, when giving information. But the transaction took place, and he could hardly prophecy such a matter;—it is possible it might have been communicated to him some other way, before the Sunday; so that this does not appear much to affect his credit.

It was much relied upon, that the number of conspirators were represented as 111,000, and that if O'Brien shall gain credit, that number must be involved in the guilt of the prisoner. But you are to judge, whether it may not be very likely the number was so

misrepresented, and if the prisoner was engaged in misleading others, whether it was not natural he should exaggerate the numbers, in order to encourage and invite those, whom he was anxious to seduce.

At the meeting at Tuite's, there was a consultation and directions were given to examine certain places, with a view to attack the Ordnance;—this goes to one of the overt acts, if you believe the intention to have been as laid in the indictment. For if it were only for the sake of plunder, it is not evidence of treason.

You are told money was collected for persons sent into France, in order to inform the government there, that great numbers were ready to assist them, if they should invade this kingdom. This evidence, if believed, shows most explicitly this society to be traitors—that United Irishmen, and all others joining them, knowing their intent, are an association formed for the abominable purpose of supporting the enemies of this country.

In weighing the credit of O'Brien, you are to reflect, gentlemen, that this has been a long trial, and there has been abundant time to send for any of the persons keeping the houses in Meath-street and other places, mentioned by the witness O'Brien, and to produce any one of them, their families or waiters, to show that the prisoner was not there. No attempt, however, has been made to produce any of them. Upon the cross-examination, O'Brien said he came from the Castle—whether he was there for protection, you are to judge;—and whether it may not be presumed that he was.

As to the credit which you are to give to O'Brien, it is also observable, gentlemen, that neither Mr. Cooke nor colonel Henniker has been produced :—Undoubtedly, it might have had weight to show, that this man went to some person of consideration, apprized him of every meeting as it was held, and communicated the transactions which passed, in the same manner as he had stated them in his evidence; for this purpose, indeed, lord Portarlington has been produced. But it is observable that he thinks O'Brien disclosed the intention of an attack upon the Ordnance in his lordship's first interview with O'Brien, viz. in the latter end of last April, whereas O'Brien has sworn that scheme to have been formed on the 7th of May. As to the precise time, however, of O'Brien's communicating this to him, lord Portarlington was not positive;—but he declared, that this communication had been made him in the presence of Mr. Secretary Cooke in the chamber of the Speaker, at the House of Commons. And yet Mr. Secretary Cooke, from whom you might expect accuracy, and who from the nature of his office, you might expect would have committed to writing whatever was disclosed to him, upon a subject so important to the nation as this, has not been produced—why, it is not for me to say;—but undoubtedly this omission leaves

a confusion, if not an inconsistency and repugnance between the evidence of lord Portarlington and O'Brien.

The constitution of the United Irishmen has been read; so far as it goes, it corroborates the testimony of O'Brien; for he stated the oath almost *literatim* the same:—indeed, you are to consider, whether it is not somewhat extraordinary he should remember it so exactly; for he stated upon his recollection the very words which are in the paper.

Clark, who was produced to support him, swore he was not in court yesterday, and when produced a second time, said he swore in mistake;—it is not likely, that a considerate man would commit such an error;—but if you are of opinion, that he was really mistaken, that circumstance alone ought not to affect his credit.

To impeach the credit of O'Brien, added to the circumstances disclosed by himself upon his cross-examination, the prisoner's counsel have relied upon the evidence of several witnesses produced to contradict him in certain particulars, to which he has sworn. He was asked, whether he had ever pretended to be an excise-officer, and you will recollect his mode of answering:—*viz*:—*He never did so when sober, he was at one time fond of drink, and could not say what passed when he was drunk.* You, gentlemen, will judge, whether this was an ingenuous disclosure of the truth, according to his oath, or an artful contrivance to guard against the consequence of being contradicted, if he swore falsely; and you will weigh against this swearing of O'Brien, the evidence of three unimpeached witnesses produced by the prisoner—John Clarke, Patrick Cavanagh and George Howell—Clarke has told you, that four days successively O'Brien went to his house, the Blue Bell, in the character of a revenue-officer, and that he declared he was such, and threatened to sue him for selling liquor without licence;—and Cavanagh and Howell have given you other remarkable instances of O'Brien's having practised similar impositions upon each of them—so that O'Brien in this respect is contradicted by three concurring witnesses, and you will see from other circumstances on which side the probability lies. From O'Brien's own account he has been guilty of several acts of extortion. He admits, that he has been in several instances a cheat, and having given his friend Edward Purcell a recipe for colouring copper, as silver, and at the same time a counterfeit half-crown. He never tried that recipe himself; but he has seen other recipes tried for that purpose. He has not thought fit however to admit himself a coiner:—that is too flagrant an offence:—he gave this recipe and half-crown to Purcell merely as a joke or humbug, as he expressed himself.

William Dunn, who has known this man from his childhood, swears that he does not deserve credit upon his oath, even in a matter of threepence value; and it is very observable

indeed, that no man in the community has contradicted Dunn in this respect, or in any manner vouched the character of O'Brien, although it has been so impeached. On the contrary, see whether this testimony given by Dunn is not strongly corroborated by the account given by O'Brien of himself, in which as I have mentioned, he admits himself to have been a common cheat, and that he gave his friend a recipe for counterfeiting the silver coin of the kingdom—that he has seen recipes tried for the like purpose, but denies that he himself has been a coiner—in which he denies that he ever pretended to be an excise-officer, when sober; but in which he is contradicted by three unimpeached witnesses.—You, gentlemen, are to consider all these circumstances, and if you believe, that O'Brien has wilfully perjured himself in any matter to which he has sworn upon this trial, I think you ought to reject his evidence altogether. If he were convicted of this perjury, he could not open his lips—if indeed you give credit to Peter Clark (who is not free from objection either) I feel, that O'Brien's testimony has been in some part corroborated—I mean as to the prisoner's being an United Irishman, and having administered that abominable oath, for doing which he might be convicted for a felony upon another form of indictment. But as to the prisoner's treasonable intent, which is the subject of your enquiry, that I consider as depending entirely and singly upon the evidence of O'Brien, who alone has related to you the meetings, the acts, the proceedings and the declarations of the prisoner and his associates. And if you believe that he has wilfully perjured himself in any part of his testimony, I think you ought to acquit, for it would be a bold experiment for a jury to try to sift this man's evidence, and to endeavour to separate the truth from the falsehood; and to rest a conviction, in a case affecting life, upon the single testimony of such a man as O'Brien is proved to be, not only by others, but by himself.

These are the observations, that have occurred to me; but you will have the advantage of hearing the sentiments of Mr. Baron Smith upon this case, which is certainly of the utmost importance to the prisoner and the public.

Mr. Baron Smith [afterwards Master of the Rolls]. Gentlemen of the Jury; I do not know that I ought to trouble you with a single observation. Every observation which the law, or justice of this case could require or warrant, has already been very fully and very ably made by my brother Chamberlain. And therefore exhausted as I am, and as I am sure you must be, I shall add but little.

It has been said, and said truly, that the offence charged against the prisoner is one of the most atrocious nature. But it has been said, and with equal truth, that the more atrocious the charge, the less probable is the

guilt of the prisoner. The humanity of our law declares that in offences of the lowest kind, innocence shall be presumed, until guilt shall be established by full and sufficient evidence. And if such be the rule in offences of the lowest kind, how much more strongly will it apply in cases of such an enormous nature as the present?—Sad experience has indeed shown, that however heinous and improbable a charge may be, it is but too often sustained by proof: yet juries should take special care, that the proof in such cases be full and satisfactory. You have been told, that under an act of parliament, frequently alluded to in the course of this trial, persons indicted of treason shall not be convicted, except upon *proveable evidence*. But, gentlemen, though that act never had been made, you would draw the rule from your own hearts, and you would say, you never would find a fellow-creature guilty of an offence for which his life must be forfeited, except upon evidence full and complete in your minds, and such as ought to satisfy your consciences.

Gentlemen, it was admitted, and in my opinion wisely admitted by the counsel for the prisoner, that if the evidence which you have heard were credible, it would support the indictment. And certainly if that evidence be such as you shall deem sufficiently deserving of credit, it will, in point of law, support the indictment; for I think the majority of the overt acts (and one alone would be sufficient) have been proved, if the evidence deserves credit. And, gentlemen, even if the testimony of two witnesses were necessary, upon which I do not think myself called upon to give any opinion at present, two witnesses have given evidence of an overt act *here*, that is, of the prisoner's having become a member of the United Irishmen in order to assist the king's enemies. If, therefore, the evidence of O'Brien and Clark be such, as you think you ought to give credit to, it will, in my mind, be sufficient to sustain the indictment and support a verdict of conviction.

But, gentlemen, the great question is, whether the evidence which you have heard this day can be considered as *proof* or not? whether it be such as would justify you in finding the prisoner guilty?—I not only think as Mr. Justice Chamberlain does, that if you were sitting to determine, whether Clark and O'Brien in the testimony they gave this day, were guilty of wilful and corrupt perjury or not; and if you should be of opinion that they were, you ought to acquit the prisoner at the bar; but I will go farther; and say, if you have a *doubt* upon that question—if your minds be in a state of balance, you ought in that case to acquit the prisoner, because to justify a verdict of conviction to yourselves and to your country, the evidence upon which you decide should be above exception, and not evidence upon which you entertain any doubt.

The testimony of O'Brien is the most material in this case. Lord Portarlington has been

produced to confirm him. Their testimony has been compared. Lord Portarlington said, that O'Brien came to him the latter end of April—O'Brien ascertained it to be upon the 28th, that he informed his lordship he had entered into a society of United Irishmen—that there was to be a funeral attended by 10,000 men—but he understood it was to be a sham funeral, for the man had been buried before. His lordship was positive this conversation passed at the first interview. He stated also, that O'Brien informed him of the meditated attack upon the Ordnance stores in the Castle. Lord Portarlington said, he could not be certain, whether that had been mentioned in the first interview with O'Brien, or not. But he did say in the course of his testimony, that he did not recollect any thing material to have been mentioned at any interview subsequent to the first. It appears, that the funeral did take place, and it was at Coghnan's that the witness received his directions to go to the funeral. The impression upon my mind was, that the witness had not till that evening heard any thing of that funeral. What the impression upon your minds is, you are to determine. However, I feel it my duty to say, that I do not think it impossible to reconcile the testimony in this respect; because it appeared, that the witness had been in close intimacy with Hyland, and others of the fraternity for some days; and therefore it might well happen that in the course of those days he had heard of the funeral intended to be had, and coupling that with the fact of the funeral having actually taken place, it furnishes a strong inference, that he did hear it at some former day.

However, lord Portarlington farther told you of the meditated attack upon the Ordnance, and he certainly did say, that though he could not be positive that the communication of that circumstance was made at the first interview, yet he said, he did not think any thing material was mentioned upon the second. From O'Brien's testimony it appears, that he did not hear of the intended attack upon the Ordnance until the 7th of May, when it was mentioned for the first time at the Sheaf of Wheat. Therefore it seems most extraordinary indeed, that he should upon the 28th of April mention a fact, which, according to his own testimony, he knew nothing of until the 7th of May. If then, you suppose he communicated at the first interview this meditated attack upon the Ordnance, it will follow, that he must have known of it before the 28th of April, and therefore his assertion, that his first knowledge of it was upon the 7th of May is not founded in fact.—And at all events, there is a cloud flung over the testimony of O'Brien by lord Portarlington, which renders it strange and unaccountable indeed, that those persons whose testimony might have removed that cloud and have satisfied your minds, have not been called; namely, Mr. Higgins, colonel

Hanniker, and Mr. Cook, by whom the witness was examined in the committee room of the Parliament House, neither has major Sirt been produced.

Clark, the corporal, was indeed produced to corroborate O'Brien's testimony, and in my apprehension, if he deserves credit, he has gone a very great way to corroborate O'Brien. Clark said, he was sworn by the prisoner to the test oath; that he heard the prisoner brag, that he had upon the night when the sixteen men were apprehended, effected his escape by being taken for an officer. So that if you believe Clark's testimony deserving of credit, it will go a great way to sustain that of O'Brien. However, Clark did say, that he was not in court yesterday; afterwards he did say, that that was a mistake, that he was puzzled and did not understand law. But according to my notes, and as I best recollect, when he was asked, where he went to from this, he said, to Ormond-quay; and on the counsel's asking him—"What! from this?" he answered "No, not from this, but from the outside of the Court-house," an answer which seemed to me to have been deliberately given, and on recollection, and not the result of embarrassment or mere mistake, as he wished to represent it; and if this either satisfies you, that he meant to commit perjury, or excites a doubt in your minds as to that fact, it takes away so much from the credit of his testimony, as to make it extremely hazardous indeed to build a conviction upon it.

Gentlemen, on the part of the prisoner five witnesses have been examined. I shall just touch upon the most material points of their testimony. O'Brien positively denied, that he ever said he was a revenue officer: he repeated it again and again, saying however, that he could not account for what he might have said, when he was drunk. John Clarke swore, that O'Brien expressly stated himself to be a revenue officer, and that he was sober when he made that declaration. Cavanagh swore, he said he was a revenue officer, and that Fitzpatrick had been removed. Howell, Mr. Wilson's clerk, swore the same thing, and that being charged with the falsehood, he went off, and did not make his appearance again.

Here then are three witnesses, of whose credit you are to judge, all swearing that O'Brien, when sober, said he was a revenue officer; thereby directly contradicting what O'Brien himself had sworn as to that fact. As to his character you had a witness who swore that he knew O'Brien from his childhood, and that he would not believe him upon his oath: an account has also been given of his conduct, to show that he is a man of improper manners, and of profligate character, which, though not sufficient of itself to overthrow his credit, yet united with the other circumstances given in evidence, ought certainly to have weight. It is possible, no doubt, that a man of a profligate disposition

may tell truth; but such a disposition will deserve the consideration of a jury, when about to determine upon the evidence of such a man.

And after his general character and particular conduct in life, have been thus impeached, does not the observation which was made before recur with double force, that it is strange and unaccountable, that not one of the persons to whom he appealed, as it were, for the truth of his testimony, has been produced, or a single individual in the community brought forward to sustain his character, or shield it from the imputations cast upon it?

On the whole, gentlemen, you are the sole judges of the credit due to witnesses. If you are of opinion, that O'Brien and Clark deserve your credit; that their testimony is unexceptionable, and unimpeached, I do think that, in point of law, it is sufficient to sustain the indictment.

But I repeat, that you ought to be satisfied beyond all possibility of doubt, that the testimony which you have heard is true, and unquestionable as to the facts it stated, before you ground a verdict of conviction upon it.

The jury retired for a quarter of an hour, and brought in a verdict—**NER GUILTY.**

In consequence of the late sitting on the trial of Finney, the Court did not sit on Wednesday the 17th.

On Thursday, the 18th, at the sitting of the Court, Mr. Attorney General rose and addressed the Court:

My lords: On the last day of the sitting of this Court, Patrick Finney was tried for high treason; the charge against him was founded on examinations in themselves so strong, so clear and consistent, and confirmed by so many collateral circumstances, that any magistrate who should omit to bring him forward, or any prosecutor who should omit to proceed against him, would be guilty of a dereliction of that duty which he owed to his country; from the time of his arrest, it has been the constant endeavour of the officers of the crown to bring him to trial as speedily as possible, and that endeavour has been opposed only by the prisoner himself; on his part the trial has been repeatedly deferred, and once on the day of his trial, he attempted farther delay without success; the length of confinement therefore cannot be complained of as a grievance either by him, or those involved in the same charge; on the trial, the evidence for the prosecution appeared as full, as circumstantial, as consistent, and satisfactory as could have been expected, and it was only by a long examination into the past life and character of the principal witness, and by resorting to persons and modes of information to which the prosecutors could have no access, that it appeared that no credit ought

to be given to the testimony of that witness; that he is not to be believed is now established by a jury of the country; under these circumstances it would be indecorous in the counsel for the crown, and inconsistent with the principles on which a prosecutor ought to act, to proceed against the other prisoners, accused by the same witness. I therefore humbly move that they be now brought up and discharged in the usual way from the indictments against them, submitting it however to the Court, that under the circumstances of the case, they ought to be obliged to give security for their good behaviour.

Mr. *M'Nally*.—My lords, my duty as counsel for Finney being now closed, I rise to bear testimony to the statement of the attorney-general, and to declare that the conduct of the prosecution has in every respect been as candid and humane as possible, and that the man accused has nothing to complain of from the day of his arrest to this hour; his trial has been deferred by himself in every instance but one, and then it was done by the Court on the urgency of circumstances.

Mr. Justice *Chamberlain*.—I think Mr. *M'Nally's* declaration has done him the highest honour, and I do add, that no defence could have been more correctly or ably conducted. I entirely subscribe to what has been said on both sides; it is clear from all the circumstances, that there never was a case more fit to be brought to trial, and to be laid before the public in all its parts, and I believe that the impression on the minds of the hearers was the same as on mine, that the life of the prisoner was in the utmost danger, until his defence was fully gone into, and the life and character of the witness, *O'Brien*, were fully developed, so as that it appeared to the jury, in which I entirely concur with them, that he ought not to obtain credit on his oath in a court of justice. The conduct of the prosecutor is precisely what it should be, to press forward the charge, when it appeared to be well founded, and to relinquish it now, when that foundation appeared to be unsound.

Mr. Baron *Smith*.—I believe we all thought the story of *O'Brien* true, methodically related as it was, until we heard the prisoner's defence; and I entirely concur in every thing that my brother Chamberlain has said—I have only to add, that the counsel for the prisoner conducted themselves in his defence not only with the greatest ability and propriety, but also with a proper attention to those paramount duties which counsel ought never to forget in the exercise of their profession.

The other persons accused of high treason were then brought up, and having joined in their challenges, were committed to the jury together, and no witness being produced, were of course acquitted; they were then addressed as follows by

Mr. Justice *Chamberlain*.—Prisoners, you

have now been acquitted of the crime with which you were charged; but I expect that you will give security for your good behaviour, and also testify your allegiance to the king, by your oath in open court. You are acquitted of the charge of treason; but it appears from unquestionable testimony, wholly independent of *O'Brien's* evidence, that you are by no means free from blame; you were assembled in an unusual number, for some purpose which you have not dared to explain, and which you were conscious required secrecy, as appears by the centinels posted to guard your meeting, and the watch word for admission into it; what the purpose of that meeting was, however, I am now ignorant; if you were of that base and abominable society, called United Irishmen, I expect you to withdraw from so foul a conspiracy; if you have entered into it, the oath you must have taken might have warned you of the baseness of their purposes; it begins, I admit, plausibly; to form a brotherly union amongst all religions is in itself an object not only innocent, but meritorious, and one which we all wish to see effected; but in the next passage, the wicked purpose begins to appear, to bring about an equal representation of the people of this country, studiously avoiding the insertion of parliament, is an undertaking of the most dangerous tendency, and so artfully drawn up, that it appears to be the work of no common man: Let me, therefore, again caution you against the crimes into which it may lead you, and which appear to be nothing short of an attempt to effect a violent and forcible revolution in the country: the remainder of the oath consists of an engagement not to inform or give evidence against any member of that society; have you reflected, that every prosecutor has by the law of the land, a right to require your attendance to give evidence on any trial in a court of justice? there you must swear to tell the whole truth, and nothing but the truth, and then, you will find yourself bound by the oath of this society to commit deliberate perjury. I, therefore once more exhort and intreat you, if you have entered into that society, to continue in it no longer.

Mr. Baron *Smith*.—I believe, and indeed I am sure, that many, too many persons have been seduced into the society of United Irishmen, and have been the dupes of the remorseless ambition of some, and of the unfeeling profligacy of others: if you ever have been in that society, I hope you were amongst the least guilty of its members, and that you are become sensible of its wicked and dangerous tendency; what is now required of you is not, unreasonable; and if you shall make any objection to take the oath of allegiance required of you, it will be strong evidence of guilty design.

The Prisoners then took the oath of allegiance and were discharged, having also entered into recognizances for their good behaviour.

627. Proceedings in the High Court of Justiciary at Edinburgh, against GEORGE MEALMAKER,* on an Indictment, charging him with Sedition, and administering unlawful Oaths, 10th, 11th, and 12th of January: 38 GEORGE III. A. D. 1798.

Curia Justiciaria S. D. N. Regis tenta in Nova Sessionis Domo de Edinburgh, decimo die Januarii, millesimo septingentesimo et nonagesimo octavo, per honorabiles viros Davideus Rae de Eskgrove, Dominum Gulielmum Nairne de Dunsmann, Baronetum, Gulielmum Craig de Craig, et Davidem Smyth de Methven, Dominos Commissionarios Justiciarum dicti S. D. N. Regis.

Curia legitime affirmata.

Intran,

George Mealmaker, weaver in Dundee, present prisoner in the Tolbooth of Edinburgh, Panel,

INDICTED and accused at the instance of Robert Dundas, esquire, of Arniston, his majesty's advocate for his majesty's interest for the crime of sedition, and others in manner mentioned in the criminal libel raised against him thereanent, bearing

That albeit, by the laws of this, and of every other well-governed realm, sedition is a crime of an heinous nature and severely punishable: AND WHEREAS by an act passed in the 37th year of our reign, cap. 123, intitled, "An Act for more effectually preventing the administering or taking of unlawful oaths," it is *inter alia* statuted and ordained, "That any person or persons who shall in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at, or present at and consenting to the administering or taking of any oath or engagement purporting or intended to bind the person taking the same to engage in any mutinous or seditious purpose; or to disturb the public peace; or to be of any association, society, or confederacy, formed for any such purpose; or to obey the orders or commands of any committee or body of men not lawfully constituted; or of any leader or commander, or other person not having authority by law for that purpose; or not to inform or give evidence against any associate, confederate, or other person; or not to reveal or discover any unlawful combination or confederacy; or not to re-

veal or discover any illegal act done or to be done; or not to reveal or discover any illegal oath or engagement which may have been administered or tendered to or taken by such person or persons, or to or by any other person or persons. or the import of any such oath or engagement, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and may be transported for any term of years not exceeding seven years; and every person who shall take any such oath or engagement, not being compelled thereto, shall, on conviction thereof, by due course of law, be adjudged guilty of felony, and may be transported for any term of years not exceeding seven years:" YET TRUE IT IS AND OF VERITY, That the said George Mealmaker above complained upon, is guilty actor, or art and part of all and each, or one or other of the aforesaid crimes: In so far as, sometime during the course of the year 1797, a number of seditious and evil disposed persons did, in various parts of Scotland, and particularly in the counties of Fife, Forfar, and Perth, form themselves into an association denominated "The Society of United Scotsmen," the object and purpose of which was, under the pretext of reform, and the obtaining of annual parliaments and universal suffrage, to create in the minds of the people a spirit of disaffection and disloyalty to the king, and the established government, and ultimately to excite and stir them up to acts of violence and opposition to the laws and constitution of this country; and which unlawful and seditious association, the more effectually to gain its object, was regularly and systematically formed upon rules and regulations most artfully adapted to the wicked and seditious purposes it had in view, such as the formation of small clubs or societies in various parts of the country, with officers belonging to them chosen by ballot, as *president, secretary, and treasurer*; the subdivision of these clubs or societies, when the numbers of the individuals composing them amounted to sixteen into other clubs under similar regulations; the formation of committees called *parochial, county, provincial, and national*; the nomination of *delegates* from each society and committee to attend the higher committees; the election (by what is called) the *National Committee of a Secret Committee* consisting of seven members; the contributing of small fines to pay the expenses

* As to this person, see the trial of Fysche Palmer, *ant2*, vol. 23, p. 237, and the proceedings of the British Convention pp. 391 *et seq.* of the same volume.

of delegates; the establishing of signs and counter-signs and of private words, the better to conceal as well as to promote the association; and lastly the administering of oaths to those who are admitted members, binding them to persevere in endeavouring to obtain the objects of the association, in defending to their utmost, those who may be prosecuted for their concern in such illegal measures; and above all, binding them to declare in the most solemn manner by what is called a *Test of Secrecy*, "That neither hopes, fears, rewards or punishments should ever induce them, directly or indirectly, to inform on, or give any evidence against any member or members of this, or similar societies for any act or expression of theirs done or made, collectively or individually, in or out of this society in pursuance of this obligation," of which dangerous and seditious association, formed upon the principles above described, the said George Mealmaker is a leading member, and did sometime in the year 1796 or 1797 administer to others, and did himself take the different oaths, or obligations, the import and tendency of which have been above libelled, and did in the course of the months of May, June, July, August, September, or October last at Dundee, county of Forfar,—at Cupar of Angus, parish of Cupar Angus and county of Forfar or Perth—and at Cupar, parish of Cupar and County of Fife—and other places to the public prosecutor unknown, wickedly, and feloniously endeavour to the utmost of his power to promote and advance the objects and purposes of the foresaid wicked and seditious association: **MORE PARTICULARLY** the said George Mealmaker did, sometime in the months of August, September, or October last, at Dundee aforesaid, attend the meeting of Delegates belonging to the said seditious association, who had assembled from different places, such as Brechin, Kerrymuir, Cupar of Angus, and Dundee (the said George Mealmaker being named delegate for Dundee aforesaid), and did at the meeting aforesaid take the chief lead in endeavouring to promote the objects of the association; and did, among other things, propose that a delegate to the *National Committee* should be named, and who was named accordingly. **FURTHER**, the said George Mealmaker above complained upon did in the course of the years 1796 or 1797, at Dundee aforesaid, and at other places to the prosecutor unknown, wickedly, and feloniously distribute and circulate, or cause to be distributed and circulated, various seditious and inflammatory papers or pamphlets, the general tendency of which was, to excite a spirit of disloyalty to the king, and of disaffection to the existing laws and constitution of Great Britain: **IN PARTICULAR** a paper or pamphlet of the above description and tendency, intitled "The Moral and Political Catechism of Man, or a Dialogue between a Citizen of the World, and an Inhabitant of Britain," (which was composed, and

written, or caused to be composed, written, and printed by the said George Mealmaker): **AS ALSO** a paper or publication, intitled "*Resolutions and Constitution of the Society of United Scotsmen*:" **MORE PARTICULARLY** the said George Mealmaker did sometime in the course of the months of May, June, July, August, September, or October last, at Dundee aforesaid, or at Cupar of Angus aforesaid, wickedly and feloniously distribute and send, or cause to be distributed and sent to Robert Bain, weaver in Cupar of Angus, two dozen copies, or thereby of the aforesaid seditious and inflammatory publication, intitled "The Moral and Political Catechism of Man, or a Dialogue between a Citizen of the World and an Inhabitant of Britain." **FURTHER** the said George Mealmaker did, sometime in the course of the months aforesaid, at Dundee aforesaid, or at some other place to the prosecutor unknown, wickedly and feloniously distribute and send, or cause to be distributed and sent to Robert Sands, weaver in Perth, 100 copies, or thereby, of the said *Catechism*, with orders to the said Robert Sands to sell and dispose of as many of them as he could: **FURTHER**, the said George Mealmaker did, at Dundee aforesaid, and sometime in the course of the months aforesaid, wickedly and feloniously distribute to David Douglas, wright in Cupar of Fife, four copies, or thereby, of the said *Catechism*, as also four copies or thereby of the aforesaid paper or writing intitled "*Resolutions and Constitution of the Society of United Scotsmen*:" **FURTHER**, the said George Mealmaker did, on the eighth day of November 1797, or on one or other of the days of that month or of the month of October immediately preceding or of December immediately following, at Dundee aforesaid, wickedly and feloniously deliver to William White, wright in Cupar of Fife aforesaid, and Robert Bell, weaver there, several copies of the aforesaid paper or publication, intitled "The Moral and Political Catechism of Man, or a Dialogue between a Citizen of the World and an Inhabitant of Britain:" **AS ALSO** several copies of the aforesaid paper or publication, intitled "*Resolutions and Constitution of the Society of United Scotsmen*:" **FURTHER**, the said George Mealmaker did, on the evening or night of the said eighth day of November 1797, or on one or other of the days or nights of that month, or of the month of October immediately preceding, or of December immediately following, at Dundee aforesaid, wickedly and feloniously administer to the said Robert Bell, previous to his delivering to him as aforesaid the copies of the aforesaid writings or papers, an oath and engagement, called "*The Test for Secretary*" (and which oath or engagement is administered to those who are chosen secretary to, and entrusted with writings belonging to, any society or club of the aforesaid seditious association) importing "That he would in safety keep all papers and documents received by

him as secretary; and that he would not "give any of them, or any copy or copies of them to any person or persons, members or others, but by a vote of the society, &c.:" And the said George Mealmaker, having on the ninth day of November 1797, been brought before Alexander Riddoch, esq. provost of Dundee, did in his presence emit and sign two separate declarations: which declarations, together with five copies of the paper or pamphlet intitled "The Moral and Political Catechism of Man, or a Dialogue between a Citizen of the World and an Inhabitant of Britain:" As also five copies of the paper or writing intitled "Resolutions and Constitution of the Society of United Scotsmen:" As also the following letters found in the custody of the said George Mealmaker, viz. Letter, dated Edr 29 June 1797, signed T. McCliesh, with the following part of the address only remaining, "Mealmaker, weaver, Dundee;" letter dated Edinburgh July 20th 1797, signed T. McCliesh, and addressed "Mr. George Mealmaker, weaver, Seagate, Dundee, w^t a parcel;" letter dated Edin^r August 10th 1797, signed T. McCliesh, but no part of the address remaining; letter dated Edin^r 3^d August 97, signed T. McCliesh, addressed Mr. George Mealmaker, "weaver, Seagate, w^t a parcel, the rest of the address being tore off: Letter dated Edin^r Lurgh, Thursday evening, beginning "Dear Cit^a," signed T. McCliesh, and addressed, "Mr. George Mealmaker, weaver, Seagate, Dundee:" Letter dated Kilry, 11th August, 1797, signed James Cook, beginning, "Felw Sitt^a," and addressed "Mr. George Mealmaker, weaver, Seagate, Dundee:" As also two pamphlets or publications, the one intitled "Gerrald, a Fragment; containing some account of the Life of the devoted Citizen who was sent as a Delegate to the British Convention at Edinburgh, by the London Corresponding Society. For acting in which capacity, he is now transported to Botany Bay for fourteen years!!" The other "John Bull starving to pay the Debts of the Royal Prodigal:" As also two slips of paper, the one having the following writing upon it: "George Mealmaker, Seagate, Dundee, 2 or 3 Ts," and the other having the following writing upon it: "Sent by Secretary of a Parochial:" As also copy of the foresaid "Resolutions and Constitution of the Society of United Scotsmen," attested by the subscriptions of Mary Miller and Alexander Fichny, will all be used in evidence against the said George Mealmaker, and will for that purpose be lodged in the hands of the clerk of the high court of judicary before which he is to be tried; that he may have an opportunity of seeing the same. At least times and places above libelled the aforesaid seditious association was formed; the aforesaid acts of sedition were committed; the aforesaid writings or publications circulated as aforesaid, and the said oath and en-

gagement administered as aforesaid: and the said George Mealmaker above complained upon, is guilty actor, or art and part, of all and each, or one or other, of the aforesaid acts. ALL WHICH, or part thereof, being found proven by the verdict of an assize before the lord justice general, lord justice Clerk, and lords commissioners of judicary, in a court of judicary, to be holden by them within the criminal court-house of Edinburgh, upon the tenth day of January next to come, the said George Mealmaker above complained upon, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.*

The libel being read over to the panel in open court, and he being interrogated thereupon, he answered—NOT GUILTY.

Procurators for the Prosecutor.

ROBERT DUNDAS, esq. of Arniston, his majesty's advocate [afterwards lord chief baron of the court of Exchequer].

MR. ROBERT BLAIR, advocate, his majesty's solicitor-general [afterwards Lord President of the Court of Session].

MR. JOHN BURNETT, advocate.

Agent.—MR. Hugh Warrender.

Procurators for the Panel.

MR. JOHN CLERK, advocate, and
MR. ALEXANDER WHYTE, Advocate.

Agent.—MR. Sievwright.

MR. Alex. Whyte, junior counsel for the panel, rose to state his objections to the relevancy of the libel. He began by observing, that whatever political principles he might find it necessary to touch upon in the course of his pleading, yet the tenets held by certain men relative to public matters, he could by no means subscribe to, because he for himself must say, that no one bore a more zealous affection to the constitution of the country than he did. Having so stated, he proceeded to read the libel, from which he said these questions naturally occurred, viz. First, as to the legality of such meetings.—Second, as to the opinion of universal suffrage.—Third, supposing the charges brought against the panel to be proved, what species of sedition it amounted to. Upon these points he proceeded to quote several ancient acts of parliament, from some of which he argued, that the inciting to commotion was not sedition, unless commotion actually ensued. As to the point of universal suffrage, he remarked, that holding such a sentiment, and expressing it too, could never be construed as criminal. Some of the highest characters in the country held that opinion; in proof of which he could refer to a meeting which was held in 1784, at the Thatched House Tavern, when

* As to the Society of United Scotsmen, and their proceedings, see Burnett on the Criminal Law of Scotland, 258.

the duke of Richmond, and many members now high in administration, were present, and Mr. Pitt himself took a leading and active part. It is true, he was not then minister, but though he may have changed his sentiments, yet he then declared, that the only means remaining for the salvation of this country was annual parliaments and universal suffrage.* It was not then said that such meeting was illegal, or that such sentiments were inimical to the constitution of the country; on the contrary, such were the opinions entertained of those specific resolutions, that the persons who framed them were looked up to as the saviours of the country.

Many eminent men have held similar sentiments and expressed them too, and, in allusion to the system of government, Montesquieu says, that the constitution must perish whenever the legislative power becomes more corrupt than the executive.—In the trials which took place here in 1793, it was stated that the British Convention having adopted the terms of the French Convention, showed that they had similar objects in view. Now, if such was considered the criminal part of their conduct, it must follow that the societies against which the charges are now brought cannot be criminal, for they have not adopted any of these terms. But it will not be proved, that the panel was a member of these societies, or that he ever did administer the oath charged. And even were it proved that he did administer the oath, it will be shown that such oath was not criminal, having no reference whatever to the act of parliament, on which the libel was founded. One part of the regulations of the society says, "that it becomes us to meet for the purposes of examining the principles of the constitution, that the defects thereof may be pointed out, and a timely reform obtained, so that the dreadful calamity which has befallen a neighbouring nation may be prevented." Now it may be asked whether in this there is any thing criminal. It is besides expressly stated in their rules, that they are to seek after a reform by peaceable means. In the House of Commons, although the members have certain privileges of speech, yet were they to alter what was inimical to the constitution, they might and would be indicted. On the motion made by Mr. Grey for a Parliamentary Reform, Mr. Fox expressed himself in terms stronger than what has been imputed to these societies.

Mr. Whyte next proceeded to read several quotations from the Political Catechism, relative to the government of the country, and the right of kings to the throne. These doctrines were similar to the opinions held by Algernon Sydney; and many other eminent men. It probably, however, will be replied

that Algernon Sydney fell a sacrifice for these opinions; but surely there is not one of your lordships on the bench, nor a gentleman in court, who does not wish, for the honour of the country, that the fate of that illustrious patriot was for ever blotted from our records, for never was there a man who stood more firm in defence of liberty, and in opposition to the most execrable tyranny. The libel farther states that the panel administered the oath of secrecy to Bell, It may be said, if the measures to be pursued by these societies were of fair and honest intention, why all this secrecy?—This is my answer—they knew that if they had dared to assemble openly for these purposes, such is the intolerance of the times, they would have been held up as objects of persecution; for I do maintain that such is the intolerance of the times at present, that there are many men who hold this sentiment, that the only proof of attachment to the constitution is an unqualified approbation of the measures of the present ministry. After referring again to the same law authorities to define the term sedition, and making many apposite remarks, he concluded a very able speech by pressing this observation, that the right of petitioning and of meeting to petition for redress of grievances is a right inherent in the poorest cottager as well as in the proudest peer.*

Mr. Burnett remarked, that the libel was of a nature charging crimes much more dangerous and alarming than any that had ever been brought before the Court. It stated a systematic plan for convulsing the country, and overturning the government; and this plan had been so far carried into effect, that committees had been instituted, and meetings held, for forming a society of United Scotsmen. It has been said that sedition is a generic term; and that it becomes the prosecutor to define the nature of it. It is not, necessary to take up the time of the Court to argue upon that point. Your lordships have repeatedly given your opinions upon that subject.† Sedition is not what it has now been argued it is—a rising of the people, or actual tumult; for if an act of that nature takes place, it ceases to be sedition, it becomes treason. Sedition is that which tends to create disaffection in the minds of the people, and to alienate their affections from the government of the country.—The pretext

* "The relevancy was debated on nearly the same grounds as in the trials in the year 1794; and an objection was taken to the indictment in so far as it was laid on the 37th of the king, that this statute was enacted with a view chiefly to mutiny in the army or fleet, and was not meant to apply to a case of this kind. The Court, however sustained the indictment." *Burnett*, 360.

† See the Scots trials in the 23rd Volume of this Collection.

* But see the Note to Gerrald's case, *ante*, Vol. 23, p. 833.

of meeting to petition for reform is used to cover the great object these societies have in view of creating commotion and disloyalty. The several acts of parliament which have been referred to, could not have been taken to found this indictment on, because they do not apply; but even though that were not the case, it could not prevent the public prosecutor from laying the libel on common law, which gives a jurisdiction to your lordships over almost any crime that can be committed. Mere speculative doctrines on government, it is true, do not form crimes cognizable by a court of justice; but surely such a species of doctrine as has been propagated by the panel in this catechism, is the most dangerous that can be conceived. The whole tendency of it is, to represent the monarchical part of our constitution, as tyranny, and that nobility and titles of honour ought to be abolished. Will any court of justice say, that such doctrines are to be considered as merely speculative, especially when taken in connection with the other parts of the panel's conduct, and as connected with these societies? With regard to the reference made to sentiments delivered in the House of Commons by certain members, I may only say, with due deference to the privileges of that House, that if some of these sentiments are not seditious, they are at least not a little inflammatory; and I may be allowed to repeat an observation made by a member who, when speaking of the sedition bills, said, that, if they had no other good effect, they would at least have this, viz. of confining sedition within the walls of that House. Mr. Burnett concluded by observing, that he did not think it necessary for him to reply to some parts of the learned gentleman's speech, as the observations did not appear strictly applicable to the case.

Mr. Clerk replied to Mr. Burnett.—After several observations upon the nature of the crime of sedition—he observed, that the libel states the panel entered into a society for the purpose of exciting sedition; but he would ask, why does it not point out how he did so?—for the appointment of a committee, and the secrecy alluded to are no crimes of themselves.—The libel also states that the panel was a leading member, but it does not say in what respect he was so. It also states, that the objects of this society were of a seditious nature; why does it not precisely state what these were? and then the panel would know what charges he had to defend himself against. Sedition is charged in general, but there is not one specific fact founded on in the whole libel. There is a charge of administering a test of secrecy, but where is the harm of this, if the nature of the society be innocent? It has been broadly stated that a person may publish his sentiments on government, in a speculative form, without punishment; and yet, when an answer was made to the same doctrine, held by the learned gentleman who spoke first, it is said we are to

look to the object and tendency of this catechism, whilst at the same time, he says, that the panel knew better than to publish his sentiments in any other form than as speculative. This surely is not argument—I would then ask what is speculative and what not? The libel states these societies to have been formed in 1797, and yet charges the panel with crimes committed with them in 1796.—The act of parliament on which the libel is founded was only passed on the 19th July 1797, and yet the crimes charged are said to have been committed in May, June, July, August, and October 1797.—Will it ever be said that this can be a relevant charge? Will the act be made to have a retrospective effect, when it does not so bear? The libel states that the panel administered the oath to Bell, but that oath is merely to keep papers. It does not state that Bell was a member of the society, and it frequently happens the secretary of a society is not a member. Mr. Clerk next proceeded to examine the terms of the oath, &c. upon which he made several ingenious remarks.

The *Solicitor General* shortly observed, That, with regard to the act of parliament, certainly no punishment could be inflicted by that act for any crime committed prior to the date at which it was passed; but if the charges are found proved to have happened since the passing of the act, then it would apply to those charges.

Their lordships proceeded to deliver their opinions upon the libel, which were unanimous in finding it relevant.

The following interlocutor was accordingly recorded:

The Lords Commissioners of Justiciary, having considered the criminal Libel raised and pursued at the instance of his Majesty's Advocate, for his Majesty's Interest against George Mealmaker, Panel; they find the libel relevant to infer the pains of law; but allow the Panel to prove all facts and circumstances that may tend to exculpate him or alleviate his guilt; and remit the panel with the libel as found relevant, to the knowledge of an assize.

(Signed) DAVID RAE, J. P. D.

The *Lord Advocate* then stated, that, as the trial would probably be of long continuance, and as the proceedings of this day had occupied so much time, he thought he should discharge his duty better to the Court, the jury, and the country, by delaying farther procedure till to-morrow. He moved the Court accordingly, which was agreed to.

The Lords Commissioners of Justiciary, continue the diet against the Panel, and whole other diets of Court, till to-morrow at ten o'clock forenoon in this place: And ordain parties, witnesses, assizers, and all concerned, then to attend, each under the pains of law; and ordain the

panel in the meantime to be carried back to prison.

Curia Justiciaria S. D. N. Regis tenta in Nova Sessionis Domo de Edinburgh, undecimo die Januarii, millesimo septingentesimo et nonagesimo octavo.—Per honorabiles viros, Davidem Rae de Eskgrove, Dominum Gulielmum Nairne de Dunsinnan, Baronetum, Gulielmum Craig de Craig, et Davidem Smyth de Methven, Dominos Commissionarios Justiciarie dict. S. D. N. Regis.

Curia legitime affirmata.

Intran,

George Mealmaker, weaver in Dundee, present prisoner in the Tolbooth of Edinburgh, panel.

Indicted and accused as in the preceding sederunt.

The interlocutor of relevance being read over in open Court, the lords proceeded to name the following persons to pass upon the assize of the panel.

Thomas Sanderson, merchant in Edinburgh.

Alexander Smith, banker there.

Robert Thomson, merchant there.

David Kinnear, banker there.

Alexander Wallace, banker there.

George Ramsay, banker there.

Andrew Bonar, banker there.

John Wood, solicitor at law there.

James More, bookbinder there.

David Hunter, merchant there.

John Walker, merchant there.

James Cochran, printer there.

James Goldie, merchant there.

Donald McLean, merchant there.

William Turnbull, merchant there.

Who were all lawfully sworn, and no objection to the contrary.

The first witness called was John Aikhen, weaver in Newton of Cupar, parish of Cupar, and county of Fife; he said he could not be positive, but thinks he has been in company with the panel—knows of an association in Cupar Fife, of which he was a member, called United Scotsmen—was admitted a member about harvest last. George Patterson told him first of the society. Robert Henderson admitted him when in his house, where he saw a copy of resolutions, which contained rules of the society. He did not take any oath. It was two days after he got the paper that he was admitted.—The form of admission was by reading of the paper. [Here the witness was shown a printed paper, containing the resolutions and an oath relative to procuring a parliamentary reform, &c.] The witness said he did not understand it to be an oath—he and Henderson had each a hold of the book open reading it, but neither of them held up their hands. Another oath of secrecy

in the same book he also read over, but did not then understand he was bound to keep any thing secret, though afterwards at another meeting he did. The society was formed of small clubs, who were never to meet above the number of sixteen.—The witness belonged to a meeting of six members; there were, however, other meetings having office bearers. He was secretary in his meeting, and kept a printed book. Never saw any writing in his club, and they had no fixed place of meeting.—There were committees belonging to the societies, named parochial, county, and national. Delegates were named from the societies. The witness once paid a penny, which he understood was collected to pay the expences of the delegates.—He knows that it was part of the rules of the society to have a secret committee. He knew the signs of the society, which were “to join the two hands, mixing the fingers, and still keeping them so, turn the hands with palms out—answered by putting the one hand on the back of the other, and mixing the fingers.” The words used were, I love light—I hate light. The societies kept up a correspondence, by sending deputations to visit each other; believes there were more than four societies in Cupar; has heard there were clubs in Leslie, Ceres, and Auchtermuchty.—One person came from Auchtermuchty to the witness about business at Dunfermline, concerning the society.—He sent for the witness to John Davidson's public-house.—The witness did not know him, but understood he was an United Scotsman by his conversation about the society.—He had a slip of paper with the witness's name on it.—The witness was at that time secretary to his club.—The stranger said the folk at Dunfermline had held a meeting, and they were surprised there was not a member from Cupar. One rule in the society was, that each member was to get as many members made as he could. The witness has been present when members were admitted. The person admitted read over the book, and then signed it. The witness, as a member of Cupar club, was sent to Dundee, by William Smith, a tailor in the New Town. He said you must go to Dundee, and get any news there about parliamentary reform.—The witness did not understand himself to be a delegate, and at first refused to go, but Smith sent a message to him some days after by John Moir, who brought a line, desiring him to call at George Mealmaker, Dundee, to get news with regard to parliamentary reform.—Understood at the time that this business was for the society of United Scotsman. Had never seen Mealmaker before, but heard of a book he had published, entitled, The Moral and Political Catechism of Man. The witness got a copy from William Smith, which James Gibbs once got from him, and he has also shewn it to several persons in his own house. At the time the witness went to Dundee, he was paid his expences by William

Smith, viz. twenty-seven pence for his expenses, and eighteen pence as his day's wages. When the witness called at Mealmaker's house in Dundee, he was not at home, but a woman in his house showed the witness to a public house, where he asked the servant whether there was any men in, upon which she opened a room door, and he went in, and saw some men, none of whom he knew. He would not have gone in unless he had thought that Mealmaker had been there. One of the men asked him where he came from. He answered from Cupar, upon which they desired him to sit down; no signs were used.—They talked upon any thing, such as *malefacturing*. One said he came from Kerriemuir, another from Brechin, and a third from Cupar Angus. Understood they had met on the business of United Scotsmen. Some men were there which he understood were from Dundee, as they were not in travelling dress.—After sitting some time, one person asked the witness how the society was at Cupar Fife? He answered it was still going on.—The same was said by the other persons present as to their places, and it was also mentioned that it was going on too in Ireland. He also heard that the army and navy wanted a parliamentary reform, and was told there was about 70,000 in one town in England. The person who said this had not on a travelling dress. It was one of the three Dundee men, but does not know which of them. There was a national committee spoken of, and one of those present was chosen to go to the national meeting. The form of choosing him was this—one man stood up, and each of the company whispered into him the name of the person who was to go, and he was to do justice between man and man, but was not to reveal the name of the person who was chosen, except to the person himself.

Here the witness was strongly urged by the Court and counsel to say who he believed the person was who stood up. He repeatedly said he did not know, nor could he guess who he was, that though he voted for that person to be appointed to go to the meeting, yet he only, when he voted, said *yourself*, without mentioning any name. After again being urged, he at last said, he understood the person to be George Mealmaker.

The witness never after told any one who was the person for whom he voted. George Smith asked him what was done, but he only answered that they had chosen a person to go to the meeting. When met to choose the delegate at Dundee, none of them received their own names, but the name of the place from which they came. The witness got the name of Cupar, Fife, another the name of Kirriemur, Brechin, &c.

Q. If William Smith had asked, whom did you vote for, what answer would you have made?

The witness repeatedly said, he did not

know what he would have answered, but at last said, George Mealmaker. The witness considered himself bound to secrecy, so that if any person had asked him the name, he would not have told him. He now thinks the panel was one of the persons whom he saw at the public-house at Dundee, and that he is the person into whose ear he whispered to go to the National Committee. There was a day fixed for a meeting at Brechin, about three or four weeks after. Knows that David Christie, a weaver in Cupar, was sent to Leslie upon the business of the society.—Knows one Walter Brown, a cleaner of yarn. He spoke to the witness about the societies, and said he wanted to see the book, but never showed him it; nor did he meet with him, though he was asked to do so. He had no particular reason for declining to go to Brown's house. Brown never expressed any scruples about the society; but when he asked him, the witness, to come to his house to get a crack, he understood it was to be about United Scotsmen.

John Aiken cross-examined.

It was about ten o'clock forenoon the meeting was held at Dundee; it continued till twelve, when the witness went home. He never saw the prisoner before or since that meeting. He merely understood the person who stood up in the room to be Mealmaker, because he desired him, the witness, to sit down. When Henderson first introduced him to the society, he never mentioned any thing of an oath; neither did he hear the name of Mealmaker mentioned. He understood that all the other clubs were framed on the same plan as that at Cupar.

William Smith, writing-master in Cupar, Fife, said he knew of an association of United Scotsmen at Cupar, of which he was admitted a member at the beginning of harvest. It was an understood rule to keep every thing secret. No minutes were kept. There was a printed paper which contained the rules of the society. The form of his admission was, the book being given into his hand, he read the whole from beginning to end, and then understood himself a member of the society. When a society became numerous, it was divided into two for the purposes of secrecy, and for promoting the increase of the members; there were about 12 clubs in Cupar. They had no permanent presses, but one was chosen each meeting: there was also a secretary and treasurer. The treasurer received any money persons chose to give to defray the expense of receiving intelligence, and that of delegates. There were committees, parochial, national, &c. and also a secret committee. There were signs which he described the same as the foregoing witness. The witness was a secretary. The secretaries held communication with each other in the town of Cupar.—Remembers being sent for to a house in Cupar, where he saw Ait-

ken and another man, who he understood had come from Auchtermuchty for the purpose of inquiring about the state of the clubs in Cupar, but does not know his name.—There were some societies in Dundee.—Knows John Aitken was sent from Cupar as a delegate to Dundee.—It was the witness who desired Aitken to go to Dundee in order to attend a meeting of the delegates from different places, and that some persons thought that if he would call at George Mealmaker, he might get access to the meeting through him. Aitken got some money from the funds of the society for going to Dundee, and when he returned, Aitken told the witness how he got into the club there, where he saw some people met, who were called by the places they came from; that they gave in reports, one of which was, that a reform was desired by a great part of England, and that the army and navy also desired it. He never said whether he had seen George Mealmaker. He but spoke of a delegate being sent to the National Meeting, and supposed it was George Mealmaker. He mentioned the manner of electing the delegate, the same as foregoing witness. Aitken made his report to the secretary at Cupar what had been done at Dundee. The witness, as a secretary, kept a copy of a catechism and the rules. Knows David Douglas, wright, and that he was at Dundee on the business of the society, some time before Aitken was there. He said that he purchased some catechisms in a house in Dundee, but declined saying what house it was, and at same time got some copies of the rules for United Scotsmen. Aitken reported, that if a delegate would go to Brechin, he would get same reports there also. After the witness was apprehended at Cupar, bailie Methven came and showed him certain signs, and asked if these were the signs of United Scotsmen, which he acknowledged they were. Mr. Methven and Mr. Horsbrough sent for William White, wright in Cupar, who came. Mr. Methven then said to White, that if he would go to George Mealmaker's at Dundee, he would probably get some copies of the Catechism, &c. as none were to be found in town. The witness then showed White the signs, and the private word was also given him. As also, a slip of paper, on which he wrote, *George Mealmaker, Seagate, two or three T*, and told White the *T* meant *tests*. White then said, he might be at a loss what to say, upon which the witness wrote upon another slip, sent by a secretary of a parochial, which meant of a committee.

William White, wright in Cupar, said, Mr. Methven sent him to Dundee to George Mealmaker; to deliver a line. At same time William Smith gave him a line, and showed him some signs with his hands, and that he was to say, *I love light*, which would be answered, by another sign, and the words, *I love darkness*. He went and found him in a workshop, but he took him, the witness, to his

house, when he made the sign. Mealmaker did not return it; but smiled, and asked if he had any thing to show for that; upon which the witness showed him a line, and said he got it from Mr. Smith, Cupar, and wanted some books. He asked whether he had ever seen the books? Witness answered, he had once seen them. He asked if he understood them? Witness said, a little. Mr. Mealmaker then said, he had some Catechisms, which he would give him to introduce in the country. Witness said, he had no money to pay Catechisms; but Mealmaker answered, it did not signify, he would get the money at any time. He then brought him some copies of the resolutions, and twelve copies of the Catechism. The Catechisms were to be 4*d.* each. Witness then sent for half a mutchkin of whisky to Mealmaker's house, which they drank, and then he returned home.

[Here the witness looked at the panel, and declared he was the same person he saw at Dundee.]

Bailie David Methven said, having apprehended William Smith, he was informed there were certain papers, containing oaths for some societies, and Smith having shown him certain signs, and given him two slips of paper addressed to George Mealmaker, he desired W. White to go to Dundee, which he did, and brought two parcels, one sealed; they contained Catechisms, and eight or nine copies of another pamphlet. The witness also sent one Bell to Dundee after White had returned. He was furnished with a letter to the provost, and had the same signs, &c. communicated to him, in order that he might get access to Mealmaker, to obtain more knowledge of the test, &c.

Mr. Charles Grace, physician in Cupar, said he was present when White returned from Dundee, and delivered in to Mr. Methven two parcels of pamphlets.

Robert Bell was called, but objected to, because he had sworn that he would either swear truth or falsehood for a few shillings, or a small sum of money.

Upon this the following witnesses were called:

John Farquharson said, he knows Robert Bell in Cupar, and has spoken to him of the present trial, when in the shop of D. Bell, merchant in Cupar. Some people asked him how he could take the oath as a United Scotsman to Mealmaker. He answered he could have sworn all night.

David Bell and John Rollo, in Cupar-Fife, were sworn, and deposed to the same effect.

Robert Bell being brought in, said, he was employed to go to Dundee, by sheriff Meldrum, with a letter to the provost, and to get some pamphlets from George Mealmaker. Before going he was shown a sign, and desired to say, *I wish more light*. He accordingly

arrived at Dundee at 10 o'clock. About 11 o'clock at Mealmaker's house. Mealmaker was looking out of his window. On going into the house, the witness gave the sign, and Mealmaker asked where he got that, he replied, it was from a man he was acquainted with in St. Andrew's. Then showed him a slip of paper; on which he went out of the house, and his wife said, he is only going to the other side of the street, to his mother's; for he dare not keep the books in his own house. He returned in a few minutes, and desired the witness to go with him into a closet, where he had some small books, which he asked the witness to take, but he said he would not pay for them, and that it was not these he wanted, it was the other books. Mealmaker said there was nothing to pay for them.

Here the witness pointed out in one of the pamphlets the word *parochial*, the same which was on the slip of paper. The witness bought one of the other books, and paid 4d. or 4½d. for it, refused to take 12, as they would have been heavy to carry. Mealmaker then showed him how to fold one, by which the oath of secrecy only was seen, and that was to be shown only to the person wishing to become a member, and to be taken before he could be shown more. Mealmaker asked him if he had formerly taken the oath, he said he had never taken the test. Mealmaker then insisted he should take it at present, on which the witness held up his hand and took it, but having stumbled a little at supplying his name in place of A. B. as in the schedule of the oath, Mealmaker asked why he stumbled, he answered, because he was not much accustomed to take oaths. The witness then thought he would not take it by his real name, and accordingly took it by the name of James Walker, reading aloud, and Mealmaker looking on. He told Mealmaker he came from Anstruther, upon which he asked how many members were in the town he came from. The witness answered about 200, and met about six or seven at a time. Mealmaker said these are small meetings. Witness answered, they were feared for being *kent*.

Alexander Smith, weaver in Newton of Cupar—knows of a society in Fife, called a Society for Parliamentary Reform. He attended some meetings—there was a preses, treasurer, and secretary, also committees and delegates. There was no oath; but the person admitted just took the book in his hand, read it, and assented to it; in which were, the test for members, the test for secretary, and the test for secrecy. The first and last were read over by members entering, but the other they did not read over, unless the person was to be secretary. Knows John Aitken, who, when in Cupar prison, told the witness he had been at Dundee, attending a meeting. Knows that David Douglas went to Dundee, before any club at Cupar was properly constituted; and

that he went there to know about the societies. Douglas, on his return, said, he would not tell the witness what he had learned at Dundee, not being a fit person, or secretary of a parochial. The witness then advised his club to send a person to get information; and William Smith was accordingly named, but does not know if he went; he believes, however, that Aitken went; he (Aitken) was once in the club with the witness, but afterwards went to make another club in a separate part of the town. The meeting at Dundee was for the purposes of learning how many people might be for parliamentary reform, and heard there were some people in the navy and army for reform. Was also told, it was making rapid progress in the Highlands and among the gentry; but they were to go by themselves, and the common people by themselves. We were to have no communication with any of the volunteers, or with the army. The purpose was for a reform in parliament; but here the witness said, he knew so little of that matter that he could not form an idea of it. As for universal suffrage, he could never comprehend what it meant. The reform was to be brought about by petition; and it was not to be done till it was known that a great majority of the nation was for it.

David Douglas, wright in Cupar—does not know the panel—never took an oath, so thinks he is not a member of any society—went to Dundee some time ago, and bought some catechisms, along with a man from Ceres: and he got some pamphlets for nothing—he gave them to a company in Cupar, where William and Alexander Smith were present. Did not know, nor can he say or suppose what the person's name was from whom he got the books in Dundee. He had no object in circulating them; but he gave a copy of the constitution to every person who bought a catechism.

After a variety of questions and evasive answers, he at last recollected seeing the name of George Mealmaker at the bottom of the title page—and afterwards he discovered something about the end of it like a test or something else. Here he was shown a copy of it, when he recollected having read something like it. The name of the lad from Ceres was Matthew. The witness said he never saw him afterwards till he came to Cupar on a Sunday, and he never spoke of these things on Sunday.—Here the lord advocate gave the sign of United Scotsmen, and asked the witness to answer him. He said he had seen the signs before, for they were going through the town of Cupar. The person who gave him the pamphlets did not make these signs, or speak about *living light*.

[Here the Court, from the whole complexion of the witness's evidence and manner of answering, committed him to

prison, for prevarication, and concealing the truth."]

Walter Brown, bleacher in Cupar, said he was an independent Quaker, and therefore the Court allowed him to give evidence without an oath. He affirmed he was applied to last harvest in Cupar, by *William Morris*, to become a member of a society. When he met *Morris*, he said to the witness, I have news to tell you, he thought he had me, and said that I must swear. I answered I would not swear to any thing before I saw it. *Morris* then asked the witness to go to *Mr. Scott mill-wright*, to endeavour to get him into the society. The witness accordingly went, but strongly advised him to have nothing to do with them, for they would ruin him and his family, and told him there were some of them to call upon him that night. This passed, and some time after a riot took place about the militia near *lord Crawford's* house—when the witness heard a man in a crowd say, damn them altogether for idiots, their houses could be all burnt before they could get out soldiers. This struck me, said the witness, and from the principles of humanity I communicated this to *lord Crawford* and *Mr. Morrison* of *Naughton*, and that there was a club going on, and said, if my person was protected, as I had been threatened, and I also added I was an old man, and had been neglected; but that a system was going on which made me shiver, and would destroy the constitution. The system I was told, was, that all through *England* were to rise in one day, and all who held places, if they resisted, were to be dispatched, and if they were quiet, they would be only dismissed. They were to stop all posts till they had a republican government fixed. They also said they had about 100,000 of the army now in *England* engaged, and 25 or 35 of a troop of horse, who went some time before out of *Cupar*, engaged by a sign. The societies were to consist not of above 16 in number. *Morris* told me of *Henderson* and *Aitken*. He said, there were several societies in *Cupar*, and some in *Dundee*, with delegates, to correspond with one another, and that there was to be no writing, but they were to know each other by signs, and that men under the appearance of doing their own business, were

to go through the societies. Recollects *John Aitken* called upon him one day, and wanted to talk about that business, but he, the witness, said, *John*, I wish that may be a well concerted plan; so he said no more.

Robert Sands, weaver in *Perth*, knows that there were some incendiaries from the west country proposed to have societies. A member from the west country proposed to him to be a member for parliamentary reform, but that he would give him more intimation three weeks afterwards. He said it was to be kept secret, till the mind of the nation was more fully known.—About twelve weeks after he called on the witness, and told him that he had been in *Aberdeen*, where the magistrates had laid him nine weeks in gaol; that he now advised the witness to have no more to do with that business, for he saw those who sent him meant to ruin him, and that it was fraught with dangerous consequences.—Knows *Mealmaker* well. He and the witness were brought prisoners to *Perth*, in 1794, and both were members of the *British Convention*. Has seen the *Moral and Political Catechism*, and had intimation from *George Mealmaker* that he was to send him 100 copies, but the witness only received 99. His letter bade me sell them. The witness said he had not the letter, and supposes it went away in the ordinary course of old letters. The pamphlets came from a *Mr. McCleish* of *Edinburgh*. He sent a card along with them. The card said, he had, in obedience to an order from *George Mealmaker*, sent him these pamphlets. This card also went in the usual way. Witness lodged some of the copies with *William Smith* at *Bridgend*, and a person afterwards borrowed his name, and took them all away. His wife burnt some copies, because she said she was constantly tormented by officers.—Witness afterwards wrote to *Mealmaker*, reproaching the measures he was pursuing, and saying it was a villanous scheme, and being secret, more might be meant than was actually expressed. His answer, in substance, acknowledged the propriety of the witness's reasoning, and that he would take his advice. *Mealmaker* assumed the character of being the author of the *Catechism*; but the witness, from circumstances, now thinks that he is not the author of it.

Robert Bain, weaver in *Cupar Angus*, is acquainted with the panel, recollects him at *Cupar* for about three weeks last summer, and lodged in his house. When there, he read a good deal, particularly *Professor Robinson's* late publication. The witness received a parcel containing two dozen of *Catechisms*, which were sent with a letter signed *G. M.* Sold all of them soon. There is a news room in *Cupar*, which was set up at the time *Mealmaker* was going away.

James Todd, *Edinburgh*, late a farmer, and now a partner with *Mr. McCleish*, printer in *Edinburgh*. The pamphlet now shown him

* The following is the entry on the record :

"It having been observed by the Court, that this witness had been guilty of gross prevarication and concealment of the truth upon oath; therefore the lords commissioners of justiciary grant warrant to and ordain macers of court to apprehend the person of the said *David Douglas*, and to commit him prisoner to the Tolbooth of *Edinburgh*, as guilty of prevarication and concealing the truth upon oath, therein to be detained till he be again brought before this Court.

"(Signed) DAVID RAE, J. P. D."

was printed at his office—and, being shown some letters, thought the signings were like Mr. McCleish's hand-writing.—Has seen letters from Mealmaker to Mr. McCleish; but does not recollect whether they said any thing about printing the Catechism. Does not think Mr. Mealmaker employed his office, but rather thinks it came from Mr. Caw's office; and afterwards he had no doubt there was a correspondence about printing the pamphlet, between Mr. McCleish and Mealmaker. Several other articles were printed, such as Mr. Pitt's Speech on the Finances, Pope's Essay on Man, and the Weaver's Companion, which last was sent to Mr. McCleish, through the recommendation of Mealmaker. He once saw a letter signed George Mealmaker, ordering some of the Catechisms to be sent to Perth.

John Henderson, journeyman printer with Mr. McCleish, knows the Moral and Political Catechism was printed in that office.

William Moncrieff, town officer in Dundee, was employed to apprehend George Mealmaker, which he did about six weeks ago. He found some papers and letters in a drawer;—one of the pamphlets was a Catechism, another *John Bull Starving*, another *Gerrald, a Fragment*.

Here the witness identified his subscription to a declaration emitted by the panel on the evening of the day he was apprehended.

Alexander Riddoch, esq. provost of Dundee, recollects receiving a letter from the sheriff clerk of Fife, desiring him to apprehend George Mealmaker, on which he granted a warrant to apprehend him. One Bell brought the letter, and the witness has reason to know Bell had a conversation with Mealmaker. Mealmaker was apprehended, and several letters found in his house, which were also brought with him. These the witness identified, as also two pamphlets, and the declaration emitted by the panel when he was examined.

William Mackay, town officer in Dundee, was employed to apprehend George Mealmaker, which he did, and also brought along with him several papers and letters, which he, the witness, signed, in presence of the Provost, and now knows them.

The declarations of the panel, libelled on having been proved by the three preceding witnesses, were then read over in open court as follows:

At Dundee, the ninth day of November, one thousand seven hundred and ninety-seven years; in presence of Alexander Riddoch, esq. Provost of Dundee;

COMPEARED *George Mealmaker*, weaver, in Seagate of Dundee; who, being examined and interrogated, DECLARES that he does not know any association of persons, either in this town of Dundee, or any other place or part of Scotland, that goes under the name of the Society of United Scotsmen.

Declares that he does not know of any association or society, or societies under any other name in Scotland for the purposes of reform, or alteration of what they may consider to be abuses of the constitution of this country; interrogated, whether he ever saw or has in his custody, or knows where there are any copy or copies of the following printed pamphlets: First, a pamphlet entitled, "Resolutions and Constitution of the Society of United Scotsmen." Second, a pamphlet entitled, "Moral and Political Catechism of Man." Third, a pamphlet intitled, "Report from the Committee of Secrecy." Fourth, a pamphlet intitled, "John Bull starving to pay the Debts of the Royal Prigal;" and, fifth, a pamphlet intitled, "Gerrald, a Fragment." Declares, that with respect to the first and second pamphlets, mentioned in this question, he declines giving any answer. With respect to the third pamphlet, declares, that he never saw, heard, or knows any thing about it. With respect to the fourth and fifth pamphlets mentioned in this question, declares, that he has seen them, but does not know if they are in his custody. Being interrogated, whether he is the author or publisher of all or any of the above five pamphlets, or knows who are the authors or publishers of all or any of them? he declines answering this question. Being interrogated, if he ever distributed any copy or copies of all or any of the above pamphlets, and to whom? He also refuses to answer this question. Being interrogated, whether or not any request was made to the declarant yesterday, either by words or signs, or tokens, for any printed copies of the said pamphlets, or any other pamphlets or publications; by whom such requests were made, and if he complied with these requests? The declarant also refuses to answer these questions. Being interrogated, whether in any association or society which he knows of, or of which he is a member, there are any signs or tokens by which the members know one another, and what these signs are? Declares, that he knows nothing of any such matters. Declares, that the last time he was in Cupar of Fife was in May last, when he only passed through the town, and did not converse or talk with any person in it. That on that occasion he was attending the Synod of Relief, as commissioner, from the Relief Congregation here, nor has he been in Cupar since the time above declared to, or even in Fifeshire. And declares, he was not in Fifeshire, to the best of his remembrance, for two years preceding that period. Declares, that he does not know one John Aitken in Cupar, of Fife, or the neighbourhood thereof, nor ever saw any such person to his knowledge. Declares, that he does not know James Bunton, weaver; Thos. Anderson, manufacturer; David Hall, stocking-weaver; William Henderson, John Loch, and William Kirkaldy, all in Cupar, or any of them, or ever heard of them to the best of

his knowledge, And being interrogated, if he knew one Thomas M'Cleish, in Edinburgh, and if he had been in the practice of corresponding with him, what was the subject of his correspondence with him for these four or five months past; and when he last heard from him, and on what subject? The declarant refuses to answer these questions respecting Thomas M'Cleish. And the same questions being put to the declarant with respect to James Cook, in Kirrymuir, declares, that he does not know the said James Cook, but refuses to answer any other of the queries respecting him. Declares, that he is a member of a reading society in Dundee, the purpose and design of which is, that the members contribute towards the expense of purchasing books which are given out to read when wanted. That the books purchased are civil, political, historical, and religious. Being interrogated, where the books the declarant alludes to are kept, in whose custody they are, and who are the other members of this reading society? The declarant refuses to answer these questions. Declares, that he does not know, or ever saw, to his knowledge, one William Smith, a writing-master, in Cupar of Fife. Declares that he, to the best of his remembrance, never had nor has he, at present, any correspondence with any societies in England or Ireland. And this declaration being read over to the said George Mealmaker, he again declares the whole to be truth. In witness whereof, this declaration consisting of this and the four preceding pages, written by William Small, writer, in Dundee, is subscribed by the declarant and the judge examiner; being emitted voluntary and without compulsion, place, and date aforesaid, before these witnesses, William Moncrieff and William M'Kay, both town officers in Dundee.

(Signed) GEORGE MEALMAKER.
ALEX. RIDDOCH, *Provoost*
WILLIAM MONCRIEFF, *Witness*.
WILLIAM M'KAY, *Witness*.

Second Declaration of George Mealmaker.

At Dundee, the ninth day of November, one thousand seven hundred and ninety-seven years; in presence of the said Alexander Riddoch, esq.

COMPEARED the before-named and designed George Mealmaker, to whom the following writings were produced, viz. Letter dated 29th June, 1797, signed T. M'Cleish, with the following part of the address only remaining: "Mealmaker, weaver, Dundee." Letter, 20th July, 1797, signed T. M'Cleish, addressed to the declarant. Letter, dated Edinburgh, August 10th, 1797, signed T. M'Cleish, but no part of the address remaining. Letter, dated 3rd August, 1797, signed T. M'Cleish, part of the address torn off, what remains as follows: "Mr. George Mealmaker, weaver, Seagate, w^t a parcel."—

Letter, dated "Edr, Thursday eve," signed T. M'Cleish, and addressed to the declarant. Letter, dated "Kirry, 11th August, 1797," signed James Cook, and addressed to the declarant. And the said several letters were exhibited to the declarant, and he interrogated, if he ever saw the same, and if he did not receive all and each of them, and if they were not yesterday all in his custody? He refuses to give any answer to these questions, or to sign any note or mark upon them as relative to this declaration; and the said several letters are marked on the back, and signed by the judge examiner as relative hereto. In witness whereof, this declaration, consisting of this and the preceding page, written by the before designed William Small, is signed by the declarant and the judge examiner; being emitted voluntary, and without compulsion, place, and date foresaid, before these witnesses, the before-designed William Moncrieff and William M'Kay.

(Signed) GEORGE MEALMAKER.
ALEX. RIDDOCH, *Provoost*.
WILLIAM MONCRIEFF, *Witness*.
WILLIAM M'KAY, *Witness*.

The *Lord Advocate* declared the evidence in proof of the libel to be concluded.

The *Procurators for the Panel* declared that they had no evidence to adduce in exculpation.

The *Lord Advocate* addressed the jury and remarked, that, notwithstanding the lateness of the hour to which this trial had extended, he was sure that when its importance to the country was considered, when the magnitude of the offence with which the prisoner is charged was taken into view, and the consequences of it to the British empire, then he would not, he hoped, in tracing the guilt home to the panel at the bar, be thought unnecessarily intruding on the patience of the Court or Jury.

His lordship observed, that it was just four years since that Court and some respectable juries had been called upon to try certain persons for similar offences with that now charged, sedition. These trials were of such a nature as would not soon escape the mind of every virtuous man, the punishments must also be fresh in their memory; but was it to be supposed that after such an interval of time an attempt should be again made to disturb the peace and quiet of the kingdom, and introduce fresh commotions? It is true as was remarked yesterday, we have not here a British Convention met in the metropolis, braving the laws, adopting the terms of the French Convention, stating itself to be the representatives of the majority of the people determined to call the British parliament to account; but if the shape is changed, it is changed to one ten times more dangerous and alarming.—We must not stretch the evidence in this or in any case, God forbid that we should, to condemn any person brought be-

fore this Court; but looking at the evidence that has been adduced to-day can we believe that any thing else was at the bottom of this plan than foul treason?

Sands, a witness, made an observation to-day, that though he once thought Mealmaker to be the author of that pamphlet, yet from some circumstances he had now reason to doubt that. It was stated by a younger counsel yesterday, that Palmer's was the only similar case to this; indeed, it must be admitted, there was a similarity in that trial with this, for Mealmaker took it upon him to say, he was the author of that pamphlet for which Palmer was tried. I do not now believe him, that he is the author of that Catechism so artfully drawn; but he has industriously circulated it among the poor industrious people, leading them away from their simple and innocent mode of life and business, under the specious pretext of obtaining a reform in parliament by petition, yet having for his real intent that plan which Brown, the witness, has told the Court this day made him shiver, and which he endeavoured to persuade his friend from embarking in; and Sands also admonished Mealmaker against it, but in vain; for though he confessed the force of his reasoning, yet down to the period of November when he was apprehended, he never ceased, as we see from the evidence, to prove himself an arch-traitor, studying to pervert and corrupt every person within his reach.

The sedition charged, must be proved either from the panel's own conduct, his friends, or his papers; and here we have evidence of the strongest nature parole, printed and real. On the parole evidence we may refer to Brown and Sands. The first from the mode he took to inform the magistrate of the county, had incurred danger to himself, and been threatened by the friends of those incendiaries with mischief. He stands confirmed by another, a most unsuspecting witness, as also by written documents. Sands tells us, he was visited by a person from the west country, who went to Aberdeen and was to return in three weeks. It is proved that similar societies were held out as existing in England and Ireland, and were talked of in the very meeting where Mealmaker, with all his caution and secrecy, was appointed a delegate. Petitioning parliament was, indeed, the ostensible pretext of those emissaries of treason; they durst not hold out publicly, that they meant to seize and dispatch our magistrates; but Sands saw through the veil, and pointing it out with the finger of truth to his friend Mealmaker, cautioned him against it, that he suspected there were villains at the bottom of the plan, and advised him to have nothing to do with it—a plan formed to conceal their real intentions, until these societies were sufficiently propagated through the country, when they were to show that it was not a parliamentary reform they had in view, but a total overthrow of the

constitution and government, for which they were to substitute, at least what subsists in a neighbouring kingdom, murder, rapine, and all the enormities which can disgrace human nature.

The parole evidence is here strongly confirmed by the "Moral and Political Catechism." It was argued yesterday, that to meet for petitioning parliament for a reform, is legal and constitutional, and that this was the innocent purpose of these societies, but in the whole of these papers there is not one word said of such an application to the legislature; on the contrary, it seems studiously avoided, but the real purpose is as plainly discernible as if Mealmaker had told what Brown had expressed, that similar scenes as those which have prevailed in Ireland, murder and every horrible crime, were to have been introduced to Britain. The thanks of the country are justly due to that active and upright gentleman the first magistrate in Fife, to whose exertions we are indebted for the detection of this formidable conspiracy. When he had by much diligence got knowledge of part of the plan, and wanted to obtain another paper to make the discovery still more complete, such was the secrecy observed by the members of these societies, that no such paper could be come at in Cupar, so that it was necessary to send a person to Dundee with proper signs and documents. These papers, however, were obtained from Mealmaker himself, so that it would be wasting time to argue upon the point of circulation, for that is directly and distinctly traced to him, and proves him to be the depository of all these doctrines of treason, which he circulated through the country, endeavouring thus to obtain the majority he so much wanted, by exciting the poor and the ignorant to rise against the rich and higher orders of society, and thus involve the whole in one common ruin.

His lordship said, that when the gentlemen of the jury retired, they would have an opportunity of perusing deliberately these publications. For the present, he would only quote a few passages. The first quotation stated, that they professed themselves friends of good order, &c. Now, said his lordship, if they were so, is this the time, this the period which friends of good order would fix upon for enquiring into the defects of our government, and raising up complaints of grievances, when every good man would feel it his duty to make every exertion in behalf of his country, and in allaying discontents? or if they were so conscious of rectitude, why all this secrecy, why these signs, tests and oaths to keep concealed—what? a measure which, by their own account, is the right which every Briton enjoys, that of inquiring into the system of the government.

But their true aim is in another part of the pamphlet more distinctly stated, viz. annual parliaments and universal suffrage, and for this they form themselves into a society of

United Scotsmen, declaring they will never desist till they have obtained their object. In another part they declare, the will of the majority is not rebellion. In connexion with this, we find by the evidence, that it was their object to bring over the majority, and then, according to the panel's opinion, rebellion became a moral duty. All this, however, is to be left to the determination of some poor ignorant people in Cupar.

In another part of the pamphlet, it is said, nothing is able to resist a determined people, and alluding to government, it says, if they act they are undone. Indeed we have heard in evidence, that the magistrates, &c. who should dare to resist, should have their throats cut, and, it is probable, that such would have been the case whether they had resisted or not. Upon the whole, it appears to have been their sole motive, to overturn the government of the country, by alienating the minds of the people, and inciting them to resistance.

We all know that every man has a right to investigate the measures of government, and may find fault with any minister, although yesterday it was stated by a young gentleman, on the other side of the bar, that such was the intolerance of the times, that men were prevented from exercising that right; but does the exercise of that right consist in the measures pursued by those people we are now talking of, in oaths, and tests, and secrecy? can such be compared with the fair, open and manly manner which has hitherto distinguished Britons? I may humbly contend that the seditious tendency of these societies is as distinctly proved, as if we had looked into the mind of Mealmaker. They were to establish a union of rights and power, and it was, no doubt, to establish their union of power that all their endeavours were directed, in order to accomplish a complete subversion of the constitution. These are the sentiments of the pamphlets issued by Mealmaker, who was to instruct all the delegates at Dundee, such as Mr. Kerriemuir—Mr. Cupar Angus.

The witness, Aitken, tells us, that, when he went to Dundee, he called at a public house, and asked if there were any men there; and, with much difficulty, he at last told us, that the name of the person into whose ear he whispered was Mealmaker. It may be observed with what caution the panel acted, when Bell applied to him for the pamphlets, even when he showed the signs and proper documents—that would not all do—he behaved to take an oath, which Bell confessed he had not taken before. In every step, Mealmaker appears to be the ringleader.

The evidence of Tod goes to prove, that the pamphlet was printed at Mc'Cleish's office, and that a correspondence passed with Mealmaker about the printing of it, and that orders were sent by him for sending parcels of them to different parts of the country. The period which Mealmaker took for carrying on his plan, was that alarming period when a mutiny

existed, and the British parliament found it necessary to pass an act to frustrate the intentions of those who had propagated such dangerous plans among the sailors and soldiers in England and Ireland. This act was to prevent unlawful oaths, yet we find that when Bell went to Mealmaker's house, he administered to him the oath of secretary, because he was then to become the custodian of papers, which should be entrusted to none but those who had previously taken that oath. The administering of this oath is most directly in the teeth of the act of parliament; it binds the person taking it to conceal even from magistrates the discovery of any document in his custody. It binds the person to obey the instructions of a society of men surely not legally constituted. If therefore there remained any doubt with the jury, as to the proof of the charge, as laid at common law, surely the proof of administering this oath, upon Bell's direct evidence, is clear and distinct. It is true, a single witness is not sufficient; but if that witness is supported by collateral circumstances, these may so strengthen it as to afford sufficient validity. Can you believe all the other parts of Bell's evidence, in which he is supported by other witnesses, and yet reject that part of it which applies to the taking of this oath? The caution of Mealmaker at administering this oath is remarkable; for he took Bell into a closet, away even from the presence of his wife.

His lordship went over every part of the evidence, and concluded, by calling upon the jury to consider the whole of the case: that if they thought these pamphlets were not of a seditious tendency, or that the panel was not the author or publisher of them, or that the societies were pure and innocent in their plans and proceedings, or that the oath said to be administered to Bell is not proved, then a verdict of acquittal will fall to be returned; but if, on the contrary, the proof amounts to a clear demonstration of those charges which have been preferred, then they will return a verdict in terms of the libel, that the panel may receive such a punishment as may deter others from making similar daring attempts to overturn the happy constitution of this country, which has hitherto remained the admiration and wonder of surrounding nations.

Mr. Clerk, on the part of the panel, made a very excellent reply to the lord advocate, in which he employed much ingenuity in the interpretation to be given to the meaning of the different exceptionable parts of the pamphlet, &c.

Lord Eskgrove, in the absence of lord justice clerk, summed up the evidence.

Three o'clock of the morning of the 12th of January.

The lords commissioners of justiciary, ordain the assize instantly to inclose in this place, and to return their verdict in the same

place, this day, at two o'clock afternoon; continue the diet against the panel, and whole other diets of court, till that time; ordain the baill fifteen assizers and all concerned then to attend, each under the pains of law; and the panel in the mean time to be carried back to prison.

Curia Justiciaria S. D. N. Regis tenta in Nova Sessionis Domo de Edinburgh, duodecimo die Januarii, millesimo septingentesimo et nonagesimo octavo:—per honorabiles viros, Davidem Rae de Eskgrove, Dominum Gulielmum Nairne de Dunsinnan, Baronetum, Gulielmum Craig de Craig, et Davidem Smyth de Methven, Dominos Commissionarios Justiciarum dict. S. D. N. Regis.

Curia legitimè affirmata.

Intran,

George Mealmaker, weaver in Dundee, present prisoner in the Tolbooth of Edinburgh, panel,

Indicted and accused as in the preceding sederunts.

The persons who passed upon the assize of the panels) returned the following verdict.

At Edinburgh, the 12th day of January in the year, 1798.

The above assize having inclosed, made choice of the said David Hunter to be their chancellor, and of the said James Cochrane to be their clerk, and having considered the criminal libel raised and pursued at the instance of his majesty's advocate for his majesty's interest against George Mealmaker, panel; the interlocutor of relevancy pronounced thereon by the Court, and the evidence adduced in proof of the libel; they all, in one voice find the panel George Mealmaker guilty of the crimes libelled. In witness whereof their said chancellor and clerk have subscribed these presents in their names, and by their appointment, place and date aforesaid.

(Signed) DAVID HUNTER, Chancellor.
JAS. COCHRANE, Clerk.

The lords commissioners of justiciary having considered the verdict of assize dated and returned this 12th day of January current,

against the said George Mealmaker, panel, in respect thereof the said lords in terms of an act passed in the 25th year of the reign of his present majesty, intituled, "An act for the more effectual transportation of felons and other offenders in that part of Great Britain called Scotland;" order and adjudge that the said George Mealmaker, panel, be transported beyond seas to such place as his majesty, with the advice of his privy council shall declare and appoint, and that for the space of fourteen years from and after this date; with certification to him that if after being so transported, he shall return to and be found at large within any part of Great Britain or Ireland without some lawful cause during the said period of fourteen years, and be thereof lawfully convicted, he shall suffer death as in cases of felony, without benefit of clergy by the law of England; for which this shall be to all concerned a sufficient warrant; and ordain the panel to be carried back to prison, therein to be detained till an opportunity shall offer for his transportation as said is.

(Signed) DAVID RAE, J. P. D.

After sentence was pronounced, the prisoner addressed the Court in a few words, in substance as follow:—"He said he thought his sentence hard, considering it had only been proved against him, that he had published the Catechism, which he solemnly declared was merely intended as simple or abstract political propositions, and with no view to injure the country.—He said, however, he saw that he was to be another victim to the pursuit of a parliamentary reform; but he could easily submit, and go to that distant country, where others had gone before him. He did not fear it. His wife and children would still be provided for, as they had been before; and the young Mealmakers would be fed by that God who feeds the ravens.—As to the Court, he had nothing to say, but, he thought the Jury had acted very hastily, for if he was rightly informed, they had only taken half an hour to consider the whole of his case. They knew best whether their conscience said they had done him justice; but there was a day coming, when they would be brought before a Jury where there was no partial government, and where the secrets of the heart were known.—He begged now to take his leave of them all."

628. Proceedings in the High Court of Justiciary at Edinburgh, against ANGUS CAMERON and JAMES MENZIES for Sedition, Mobbing, and Rioting, January 15th and 17th: 38 GEORGE III. A. D. 1798.

Curia Justiciaria, S. D. N. Regis, tenta in Nova Sessionis Domo de Edinburgh, decimo quinto die Januarii, millesimo septingentesimo et nonagesimo octavo:— Per honorabiles viros Davidem Rae de Eskgrove, Dominum Gulielmum Nairne de Dunsinnan, Baronetum, Gulielmum Craig de Craig, et Davidem Smyth de Methven, Dominos Commissarios Justiciarum dict. S. D. N. Regis.

Curia legitime affirmata.

Intran,

Angus Cameron, wright and architect, late residing at Weem, parish of Weem, and county of Perth, presently prisoner in the Tolbooth of Edinburgh, and

James Menzies, jun. merchant in Weem aforesaid, panels,

INDICTED and accused at the instance of Robert Dundas, esquire, of Arniston, his majesty's advocate for his majesty's interest, for the crimes of sedition, mobbing, and rioting, in manner mentioned in the criminal indictment raised against them thereanent; bearing,

THAT ALBEIT by the laws of this and of every other well-governed realm, sedition, as also mobbing and rioting, more especially with the intent and purpose of violently opposing and resisting a public law, and when accompanied with acts of violence against the persons entrusted with the execution of such law, tending to deter them from the execution of their duty, are crimes of an heinous nature, and severely punishable: YET TRUE IT IS AND OF VERITY, that you the said Angus Cameron and James Menzies have presumed to commit and are guilty actors, or art and part of all and each or one or other of the aforesaid crimes, aggravated as aforesaid. IN SO FAR as a riotous and disorderly assemblage of persons, having on the morning of the 4th day of September, 1797, met at various places in the parish of Dull and county of Perth, with the avowed and determined purpose of violently opposing and resisting the execution of an act passed in the 37th year of the reign of his present majesty George the third, cap. 103, intituled, "An act to raise and embody a Militia Force in that part of the Kingdom of Great Britain called Scotland;" and having in pursuance of the said illegal and seditious purpose, gone to the dwelling-houses of various persons in the said parish of Dull,

and compelled them to join and accompany the said mob; did, thereafter, on the said 4th day of September, 1797, or on one or other of the days of that month, or of the month of August immediately preceding, or of October immediately following, proceed to Weem, parish of Weem, and county aforesaid; at which place you the said Angus Cameron and James Menzies, with a number of others your associates, did wickedly and feloniously join the said mob; and did take an active part in all their proceedings; and the said riotous and disorderly mob, among whom were you the said Angus Cameron and James Menzies, having surrounded the dwelling house of the rev. Mr. James M'Diarmid, minister of Weem aforesaid, and compelled him to join them, did, thereafter, on the said 4th day of September, 1797, or on one or other of the days of that month, or of the month of August immediately preceding, or of October immediately following, and in pursuance of their aforesaid wicked and seditious intent, proceed to the house of Castle Menzies, the residence of sir John Menzies, one of the deputy lieutenants of the county of Perth, and which is in the immediate neighbourhood of Weem aforesaid, and the said sir John Menzies having come out of his said dwelling house, the said riotous and disorderly mob, among whom were you the said Angus Cameron and James Menzies, called out, that they wanted a repeal of the Militia act, and it having been suggested that the said mob should return to Weem and write out a petition stating what they wanted, they the said persons thus riotously assembled, fixed upon you the said Angus Cameron and James Menzies, or one or other of you, to write out the aforesaid petition, but you having declined to do so, and insisted on holding a personal communication with sir John Menzies, did accordingly, with the intent and purpose above libelled, bring back the foresaid riotous and disorderly mob to Castle Menzies aforesaid, their numbers at this time amounting to upwards of one thousand, and being mostly armed with sticks and bludgeons; and the said persons thus riotously assembled, among whom were you the said Angus Cameron and James Menzies, again called out in the most violent and clamorous manner, that they would have no militia, and insisted that the said sir John Menzies should write or sign an obligation importing, that he would take no part in carrying the aforesaid act of parliament into execution, and threatened that

if he did not do so, they would set fire to the house of Castle Menzies, and carry the gentlemen who were there prisoners to Athol House; but you the said Angus Cameron and James Menzies, or one or other of you, having thereupon proposed that the said persons thus riotously assembled, should wait the arrival of another mob composed of the Grandtully people, and the said Grandtully people having soon thereafter arrived along with others, and joined the aforesaid mob, making in all an assemblage of persons of two thousand and upwards, mostly armed with bludgeons; you the said Angus Cameron and James Menzies or one or other of you, did, thereafter, encourage and instigate the said mob to insist upon sir John Menzies signing an obligation of the tenor aforesaid. Accordingly the said persons thus riotously and disorderly assembled, did, immediately or soon thereafter, surround the person of the said sir John Menzies, and by threats of immediate violence, did compel him to agree to their demands, whereupon a table having been brought out of the house, you the said Angus Cameron and James Menzies, or one or other of you did thereafter write or cause to be written, upon a sheet of stamped paper, which had been procured for that purpose, an obligation of the following import and tendency, and which was dictated by you the said Angus Cameron: "We the following subscribers, bind and oblige ourselves as we shall answer to God and man that we shall by every legal and constitutional means, adjoin our power, declare our detestation and abhorrence of the late act enacted in parliament, for levying a militia in Scotland. That we hereby solemnly declare that we shall use no forcible means to apprehend, confine or imprison any person assistant whatever who has appeared at Castle Menzies or elsewhere, or in any part of Perth on prior days; further, that we shall petition government for an abolition and nullifying of the foresaid act from the records of the British parliament; that the members of parliament for this county, shall present this petition, or any annexed thereto, to the two Houses of Parliament, to the privy council, during the prorogation of parliament. This we shall do of our own free will and accord, as we shall answer to God." Which paper wrote and dictated as aforesaid, or one of a similar import and tendency, the said riotous and seditious mob, among whom were you the said Angus Cameron and James Menzies did thereafter compel various persons then present to sign; and did further compel various persons to take and administer to others an oath importing, that they would adhere to the obligation therein contained: in particular the said riotous and seditious mob, among whom were you the said Angus Cameron and James Menzies, who took an active share in all the proceedings, did time and place aforesaid, compel the said

sir John Menzies, Mr. James Stewart Fleming of Killiehassie, Joseph Stewart younger of Foss, William Stewart younger of Gairth, James M'Diarmid, minister at Weem, and Archibald Menzies, minister of Dull, to sign the aforesaid paper or declaration; and did further compel the said Mr. James Stewart Fleming to administer an oath to the said Messrs. Joseph and William Stewart, James M'Diarmid and Archibald Menzies, importing that they would adhere to the obligation extorted from the said sir John Menzies, and signed by them as aforesaid; after all which proceedings you the said Angus Cameron did mount the pillar of the gate at Castle Menzies aforesaid, and did then and there most seditiously and wickedly administer an oath to the people thus riotously assembled, to stand by one another in these their illegal endeavours, to resist the authority of the established law of the country; further the said persons thus riotously and disorderly assembled, among whom were you the said Angus Cameron and James Menzies, did, on the said 4th day of September, 1797, or on one or other of the days of that month, or of the month of August immediately preceding, or of October immediately following, in pursuance of the same wicked and seditious purpose of opposing the public law of the country, proceed to the dwelling-house of Alexander Menzies, at Balfracks, parish of Fortingal and county aforesaid, carrying with them the paper or obligation extorted and signed as aforesaid, and did then and there compel the said Alexander Menzies to sign the same; and William Menzies younger of Balfracks having refused to sign the said paper, he was dragged by the said riotous mob to some distance from his father's house, and was at length compelled to sign the same, but under a certain qualification which he then added, to which, however, you the said Angus Cameron made some objections. Further you the said Angus Cameron and James Menzies or one or other of you, together with the foresaid riotous and disorderly mob, did, on the said 4th day of September, 1797, proceed on towards Balloch, parish of Logierait and county aforesaid, you the said Angus Cameron riding on horseback before the said mob, and acting as their leader; and an alarm having been given that troops were coming up, you the said Angus Cameron and James Menzies or one or other of you, did then most wickedly and seditiously propose, that the said mob should go to Taymouth and break open the armory there, and also secure some arms which the said persons mentioned were at Glenlyon-house, and Castle Menzies; and you the said Angus Cameron and James Menzies, or one or other of you, did further say that having got possession of these arms, the persons thus assembled and armed, need not be afraid of the troops, as they could retire to the hills in the day, and come down and attack the soldiers at night, thereby exciting and instigating the

said mob, to oppose and resist, to the utmost of their power, any military force that might be sent against them. Further you the said Angus Cameron and James Menzies, or one or other of you, did on the said 4th day of September, 1797, or upon one or other of the days of that month, or of the month of August immediately preceding, or of October immediately following, along with a riotous and disorderly mob, wickedly and feloniously surround the dwelling-houses of various other persons in the said county of Perth, and did compel them to sign a paper or declaration of the tendency and import above libelled, and did besides assault and maltreat the persons of various individuals in the said county, and did by force and threats compel others of them to join the foresaid illegal and seditious mob, and to take and administer an oath importing, that they would not be in any shape aiding or assisting in carrying the foresaid Militia act into execution; while others they compelled to swear, that they would be true and faithful to the cause in which they had engaged, meaning the illegal and seditious opposition to the aforesaid statute: more particularly you the said Angus Cameron did, along with a riotous assembly of persons on the said 4th day of September, or on one or other of the days of that month, or of the month of August immediately preceding, or of October immediately following, wickedly and feloniously surround the dwelling-houses of doctor Thomas Bisset, minister of the parish of Logierait aforesaid, and of major Alexander M'Glashan in the parish and county aforesaid, and did compel the said doctor Thomas Bisset and major Alexander M'Glashan to join the said riotous and seditious assembly, and did thereafter at Pitnacree parish of Logierait and county aforesaid, compel the said doctor Thomas Bisset, and major Alexander M'Glashan to sign a paper or declaration of the import and tendency above libelled; and further did compel the said major Alexander M'Glashan to administer an oath to the said doctor Thomas Bisset, and to John Thomson, constable at Pitnacree aforesaid, importing in substance, that they had not been, and would not be accessory in any shape in carrying into execution the aforesaid Militia act, and which oath administered as aforesaid, the said doctor Thomas Bisset and John Thomson were by the said riotous and seditious mob compelled to take, after all which, you, the said Angus Cameron did wickedly and seditiously address the said mob thus unlawfully assembled, and did exhort them to be true and faithful to one another in the cause in which they had engaged, meaning their riotous and illegal opposition to the Militia act, and did thereafter most wickedly and seditiously administer to the said persons an oath to the aforesaid effect. Further, you the said James Menzies did on the said 4th day of September, 1797, or on one or other of the

days of that month or of the month of August immediately preceding, or of October immediately following, along with a riotous and seditious mob, wickedly and feloniously surround the house of Ballechin, parish of Logierait, county aforesaid, and did compel Hope Stewart, of Ballechin, James Stewart, writer to the signet, and captain James Spence, to sign the paper which had been dictated as aforesaid by you, the said Angus Cameron, and signed at Castle-Menzies aforesaid, or one of a similar import and tendency; and, not satisfied with this, the said riotous and seditious mob, among whom was you, the said James Menzies, did violently assault the person of the said Hope Stewart at the door of his own house, and did drag him along the ground, and did strike him several blows with bludgeons, so that it was with difficulty he was rescued from their hands, and his life saved. Farther, you, the said Angus Cameron and James Menzies, or one or other of you, having, in the course of the months of August and September aforesaid, conspired with certain other wicked and seditious persons, to the prosecutor unknown, did endeavour to excite risings of the people from different parts of the country, in order that, having thus brought together a numerous convocation, you might carry still farther your illegal opposition to the Militia act, and to the established law of the land; and in prosecution of this wicked and seditious design, you did, on Sunday the 10th day of September, 1797, or on one or other of the days of that month, or of the month of August immediately preceding, or of October immediately following, go to the church-yard of Kenmore, in the county of Perth, and did there endeavour to excite the people to go on the next day to Fortingal, telling them that there were sixteen thousand men to meet there, to oppose the Militia act; and did endeavour, by all the means in your power, to excite the people to attend this wicked and seditious assembly; and you did in particular say to them, that those who did not go willingly, would be forced: and farther, in prosecution of the said wicked design, you did go to Kinlochrannoch, in the county of Perth, upon the evening of the said 10th of September, and did there inform divers people, that there was to be a meeting on the next day, and did utter many wicked and seditious speeches, tending to excite the people to attend a tumultuous assembly as aforesaid; thus endeavouring, as far as it lay in your power, to procure an illegal and seditious convocation of the lieges, in opposition to the public law of the country. And you, the said Angus Cameron, having been apprehended and carried before Archibald Campbell, esquire, of Clathick, sheriff depute of Perthshire, did, on the 14th and 15th days of September, 1797, in his presence, omit and sign two separate declarations: and you, the said James Menzies, having been apprehended on the 14th day of September, 1797,

and having been carried before the said Archibald Campbell, esquire, did, in his presence, emit and sign two declarations, dated the said 14th day of September and year foresaid; as also a third declaration, dated the 16th day of the said month of September and year foresaid. All which declarations, together with a paper, dated at Easthaugh, of Dalhain, 5th September, 1797, will be used in evidence against you, the said Angus Cameron and James Menzies respectively, and will for that purpose be lodged with the clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same: AT LEAST, times and places above libelled, the aforesaid riotous and seditious proceedings took place—the aforesaid seditious speeches were spoken—the aforesaid illegal and seditious attempts made to excite farther mobs and risings of the people; and you, the said Angus Cameron and James Menzies, or one or other of you, are guilty actors, or art and part, of all and each, or one or other, of the foresaid crimes. ALL WHICH, or part thereof, being found proven by the verdict of an assize before the lord justice general, lord justice clerk, and lords commissioners of justiciary, you, the said Angus Cameron and James Menzies, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

(Signed) JOHN BURNETT, A. D.

The indictment being read over to the panels in open court, and they being severally interrogated thereupon, they both answered, NOT GUILTY.

Procurators for the Prosecutor.—Robert Dundas, esq. of Arniston, his Majesty's Advocate; Mr. Robert Blair, Advocate, his Majesty's Solicitor General; and Mr. James Oswald, Advocate.

Procurators for the Panel, Angus Cameron.—Mr. John Clerk, Advocate.

For the Panel, James Menzies.—Mr. James Fergusson, Advocate; and Mr. James Graham, Advocate.

Parties' procurators having been fully heard upon the relevancy of the indictment,

The lords commissioners of justiciary having considered the criminal indictment, raised and pursued at the instance of his majesty's advocate for his majesty's interest, against Angus Cameron and James Menzies, panels; they find the indictment relevant to infer the pains of law; but allow the panels, and each of them, to prove all facts and circumstances that may tend to exculpate them, or either of them, or alleviate their guilt; and remit the panels with the indictment, as found relevant to the knowledge of an assize.

(Signed) DAV. RAE, J. P. D.

The lords commissioners of justiciary continue the diet against the panels, and

whole other diets of court, till Wednesday next, at eleven o'clock forenoon, in this place, and ordain parties, witnesses, assizers, and all concerned, then to attend, each under the pains of law; and ordain the panels, in the mean time, to be carried to the Tolbooth of Edinburgh.

(Signed) DAV. RAE, J. P. D.

Curia Justiciaria S. D. N. Regis tenta in Novæ Sessionis Domo de Edmiburgh, decimo septimo die Januarii, millesimo septingentesimo et nonagesimo octavo:—per honorabiles viros Davidem Rae de Eskgrove, Dominum Gulielmum Nairne de Dunsinnan Baronetum, Gulielmum Craig de Craig, et Davidem Smyth de Methven, Dominos Commissionarios Justiciaria dicti S. D. N. Regis.

Curia legitimè affirmata.

Intran,

James Menzies, junior, merchant in Weem, parish of Weem, and county of Perth, present prisoner in the Tolbooth of Edinburgh, panel.

Indicted and accused as in the preceding sederunt. But Angus Cameron, who was indicted along with the said James Menzies, jun., and who entered the panel and pleaded to the indictment at last sederunt, being oft times called in court and three times at the door of the court-house, by a macer of court, as use is, he failed to appear.

Whereupon his majesty's advocate represented, that the said Angus Cameron, after being recommitted at last sederunt, had applied * to one of their lordships number, by

* "The application was made to a single judge, and was no doubt complied with, but whether under the notion that the act compelled him to grant such relief, or in the exercise of his own discretion, does not appear. This case, however, affords the strongest illustration of the inexpediency of granting bail in such circumstances. Cameron had been charged as the ringleader of a formidable mob, in order to oppose the execution of the militia law. At first, he was apprehended on a charge of high treason, but was afterwards indicted for mobbing and rioting. He had offered bail, but the security not being sufficient, it was rejected. His trial then came on, when he pleaded not guilty: a long debate took place on the relevancy, on which an interlocutor was pronounced, and further proceedings adjourned till the second day thereafter. On the intermediate day, or the evening of the day on which his trial was adjourned, he again applied for bail, found sufficient surety, was admitted to bail, and thereafter absconded. This was the case which more immediately led to the passing of the act of the 39th Geo. 3, cap. 49."—Burnett on the Criminal Law of Scotland, 339.

petition, and was admitted to bail; and having found caution upon the evening of that day, was liberated from prison; and, it would seem, taking guilt to himself, has absconded. He, therefore, was under the necessity of moving their lordships to pronounce sentence of fugitation against the said Angus Cameron, and to declare the bond of caution granted for his appearance forfeited.

The lords commissioners of Justiciary decern and adjudge the said Angus Cameron to be an outlaw and fugitive from his majesty's laws; and ordain him to be put to his highnesses horn, and all his moveable goods and gear to be escheat and inbrought to his majesty's use, for his contempt and disobedience in not appearing this day and place in the hour of cause, to have underlyen the law for the crimes of sedition, mobbing, and rioting in manner mentioned in the criminal indictment raised against him thereanent, as he who was lawfully cited to that effect oft' times called in court, and three times at the door of the court-house, and failing to appear as said is: and further the said laws declare the bond of caution granted for the appearance of the said Angus Cameron to be forfeited; and ordain the penalty therein contained to be recovered by the clerk of this court, to be disposed of as the court shall direct.

(Signed) DAV. RAE, J. P. D.

Thereafter his majesty's advocate represented that he meant to use every exertion in his power to have the said Angus Cameron apprehended and brought to trial, along with the panel James Menzies, for the very heinous offences with which he stood charged; for which purpose the strictest search would be pursued in this country, and in England and Ireland. That he was unwilling to proceed against Menzies till the result of these searches

"This statute" [39 Geo. 3, c. 49] "was passed a short time after the various trials that had taken place in Scotland for this offence" [sedition], "betwixt the years 1793 and 1799, and particularly after the riots at passing the militia law; and its professed object was to cure an evil which was then felt, and which would in all similar cases have been felt—the persons accused immediately obtaining, by contributions among their associates, the full amount of the bail then exigible, to enable them to abscond and evade a trial. This plan had been successfully followed by Cameron, the ringleader of a formidable mob or rather insurrection in the county of Perth, in opposition to the execution of the militia law; and it was his case that more immediately led to the passing the statute of the 39th of the king."—*Ibid.* 346. See on the subject of the stat. 39, G. 3, Mr. Hume's observations *Comm. Tr. for Cr. vol. 1, pp. 148. et seq.* See also Burnett 346 *et seq.* and Appendix, No. XVI.

should be known; and as a very material witness in the trial could not be brought up from indisposition, he was upon the whole induced to move their lordships to desert the diet against the panel, James Menzies, *pro loco et tempore*.

The lords commissioners of justiciary, in respect of what is before represented, desert the diet against the panel James Menzies *pro loco et tempore*.

(Signed) DAV. RAE, J. P. D.

[Menzies was re-committed on a new warrant, and afterwards admitted to bail.

No farther proceedings appear on the record against either Cameron or Menzies.]

The following are the declarations of Cameron and Menzies of September 14th and 15th, 1797.

At Perth the 14th day of September, 1797 years.

In presence of Archibald Campbell, esq. of Clathick, advocate, sheriff depute of the shire of Perth, compeared Angus Cameron, wright and architect, and residing in the house of Mrs. Menzies in Weem, and James Menzies, jun. residing in Weem, and being examined, declare that they were this morning apprehended at Mrs. Menzies' house in Weem, by virtue of a warrant granted by Mr. James Chalmers, sheriff substitute of the shire of Perth; that some time after they were apprehended, Mr. Chalmers came to Mrs. Menzies' house, and seized sundry papers which he found there, and put them up into two bags, which he sealed, and which bags so sealed they now see upon the table; and the said bags being opened by the sheriff in their presence, a number of the papers therein having no reference to the crime for which they were apprehended, and which might be of use to the declarants or their friends, for carrying on their business, were returned to them; but nine letters, two songs, a draught or copy of a letter, and some jottings, all belonging to the said Angus Cameron, were kept and sealed up in a paper signed by Angus Cameron, and of this date.

(Signed) ANGUS CAMERON.
JAS. MENZIES, JUN.
AR. CAMPBELL.

Follows declaration of Angus Cameron, 15th September, 1797.

At Perth, the 15th Sept. 1797 years.

In presence of Archibald Campbell, esq. of Clathick, advocate, sheriff depute of Perthshire, compeared Angus Cameron, wright and architect, and residing at the house of Mrs. Menzies in Weem; who being examined, declares, That on Sunday, the 3rd of September, he went to hear sermon at Dull, and after the afternoon sermon, he saw a crowd at the Cross of Dull, and understood, on inquiry, that some persons were employed to

put up a printed explanation of the Militia act by the duke of Athol, at the church of Dull, but were prevented by the crowd from doing so during the time of divine service; the declarant was also informed, that some persons who had gone to Kenmore and Fortingall after being at Dull to put up the explanation at these two places, had been prevented by the crowd from putting it up either at Kenmore or Fortingall. Declares that he asked at Dull what the paper was; and on a man of the name of Adam Menzies in sir John Menzies' ground at Appin of Dull, giving the declarant the paper which he said he had found in the porch of the church; the declarant read it to the crowd around, and observed the explanation was necessary for such as had not read the act, but not for those who had read it; and declares, that he himself had read the abstract of it in the *Edinburgh Courant* before that time, and he understood that by the act no militia-man could go out of Scotland, except he was drafted into a regiment in Scotland at the time; but the declarant did not inform others that such was his idea of the act. Declares, that prior to this time there had been a meeting of the people of the parish of Logierait, who had laid hold of Fleming, a society schoolmaster, who had been employed to make up the list at Logierait; there had likewise been next a meeting of people at Dull, about the middle of August, who took both the schoolmaster and minister of Dull into custody; and the declarant saw the people at Aberfeldy on their return from this meeting; after this there was a meeting at Kenmore where the people took hold of the session books as the declarant was informed. Declares, that after this there was a meeting in Fortingall, in Glenlyon, where the session books of Fortingall were taken hold of, and the schoolmaster taken, bound not to act; all of which meetings were prior to the second meeting of the 3rd of September at Dull. Declares, that the declarant had no knowledge of these meetings at the time they took place, nor was concerned in promoting them. Declares, that on Sunday night, or early on the Monday morning of the 4th of September, the people of Foss and of the parish of Dull, or from that quarter, had collected and forced along with them Mr. Joseph Stewart of Foss, Mr. Stewart younger of Gairth, Mr. Menzies, minister of Dull; Macgregor, session clerk of Dull; Mr. Menzies, factor for sir John, and his son Mr. Robert Menzies, writer to the Signet, or these gentlemen came with the crowd, and also Mr. M'Diarmid, minister of Weem; that the crowd came to the declarant's house, and he went with them, they having first threatened to force him to go, and the declarant having judged it prudent to say, he would go of his own accord. That the crowd, consisting of about two thousand, went from Weem to Castle-Menzies, and sent in sir John's factor, that sir John might come out, and that a peti-

tion to the king might be prepared. That after some time a petition was wrote by John Robertson, session clerk at Weem, to whom the declarant dictated the terms, but in doing so only translated from the Gaelic what the people around desired to be put down, and which was communicated first to sir John for his approbation; that the petition begun in this way, "We the following subscribers," and bound them to present a petition to the king and parliament in a legal and constitutional manner, and to the privy council during the prorogation of parliament for the abolition of the Militia act; and declares, that sir John corrected the spelling of a word in the petition; that the paper further contained an obligation on the subscribers, that they were not to use any means for apprehending any of the petitioners or subscribers. Declares, that many of the people also insisted that the paper should contain an obligation on sir John, and the subscribers not to bring any military force into the country; but to this the declarant and others objected as being an obligation sir John could not fulfil, and on a show of hands, and by the voice of the people, it was determined that this should not be inserted. Declares, that this petition was subscribed by sir John and the gentlemen present, but not by any of the common people, nor by the declarant, who it was resolved should subscribe a petition to be annexed to this paper, leaving this paper to be subscribed by the gentlemen only out of respect to them. Declares, that when the crowd came down to the gate, they came to a resolution to protect themselves and their masters, and sir John in particular, from any illegal violence; and the cause of coming to this resolution was, that they were afraid the Athollers would attack sir John: that several persons, and amongst others, the declarant asked the people if such was their resolution, which they declared it was, by holding up their hands; but the declarant did not then administer any oath to any person present, nor was any oath administered. Declares, that after this the declarant and the men, who might be about four thousand in number, proceeded to Balfrax, where Mr. Menzies of Balfrax signed the paper on the outside of his own house, and his son, doctor Menzies, was taken down to the river-side, which is about a gun-shot from the house, or went there, where he refused to sign the petition, except under this qualification, that he should be allowed to act, if called on to do so, as an officer in his majesty's service; that some of the crowd refused to agree to this, but the declarant informed them, that to compel an officer to act so, was treason as well as sedition, and doctor Menzies was then allowed to sign with that qualification. Declares, that some of the crowd had insisted that doctor Menzies should be obliged to swear as well as sign, and declares, that the ministers of Dull and Weem had been made to take an oath at Castle-Menzies, that they

would act agreeably to what was contained in the paper they signed. Declares, that the people then proceeded to Mr. Stewart of Blackhills in one detachment, and another detachment went on towards Ballechin, with which last party the declarant was; that the party which went to Blackhill got Mr. Stewart's subscription to the paper, and also got Mr. Stewart of Clochfoldich's subscription to the paper. Declares, that the declarant having got his horse from James Menzies; went on before the Ballechin party, and on the road met with a crowd of people he had not seen before, or heard of from Logierait, who took the declarant with them to the house of doctor Bisset, minister of Logierait, it being then dark, and past nine at night; and the doctor was brought out of his house, or came out of it, with a view to proceed to Ballechin. Declares, that others of this Logierait party went to the house of major M'Glashan, and brought him towards Ballechin: that when the Logierait party and the declarant returned into the road they had left, they found that the people from Castle-Menzies, including the party who had been at Blackhill, and were returning from thence when the declarant and the Logierait party met them. Declares, that as there had been irregularities at Ballechin committed by the crowd, there major M'Glashan and doctor Bisset were not carried to Ballechin, but to a farm-house near Ballechin, where major M'Glashan signed the paper on the same condition as doctor Menzies had done, and doctor Bisset also signed the paper, but the declarant does not recollect that at this time doctor Bisset took any oath, and he is positive that he did not desire major M'Glashan to take the doctor's oath; that doctor Bisset produced a parish list which was delivered up to some of the people; that at this time Thomson, a constable, was made to swear about papers, major M'Glashan having taken his oath at the desire of some of doctor Bisset's parishioners, and without the declarant's interfering. Declares, that he offered his horse to doctor Bisset, which the doctor declined to take; that the declarant was within hearing when the oath was administered to doctor Bisset. Declares, that after this, the declarant and the people proceeded to Weem, it being then about two o'clock on Tuesday morning, and went a little way beyond Weem on their road to Glenlyon, but afterwards resolved to delay going there till Monday, the 11th of September, and the declarant told them to meet in parties of forty-nine, if they were to assemble so as they might act legally and constitutionally, into parties of which number the declarant had desired them to divide at Castle-Menzies on the morning of the 4th, and it was intended to proceed to doctor Campbell of Glenlyon, to get a warrant or sanction from him to meet or petition to the number of forty-nine at a time, in case that should be necessary. Declares, that the

declarant remained at his ordinary work till Sunday the 10th, except a part of a day on which he was at a wedding, and on Sunday he went to hear sermon at Kenmore, where he expected to meet two sawyers he had in employment at Rannoch; that, after sermon at Kenmore, he had a conversation with the people there about the Militia act, and the legality of petitioning, and the declarant told them it was lawful to petition to the number of forty-nine at a time, provided doctor Campbell of Glenlyon or Mr. Stewart of Gairth, presided at such a meeting. Declares, that after this he went to Rannoch in hopes of meeting his sawyers, who had not come to Kenmore, and to inquire about some timber he had there, which he had been told was in danger of being floated down the river; and to the persons there who asked him about meetings to petition, he answered, that he heard there was to be a meeting at Fortingall, in Glenlyon, on Monday the 11th. That the declarant remained in Rannoch on Sunday night, and came home on Monday at three o'clock and remained there and about his ordinary work 'till he was apprehended on the Thursday morning by captain Colberg, and a party of the Windsor forresters, though he had received notice he was to be apprehended. Declares, that on Monday the 4th, and Tuesday the 5th, he saw no person forced to go along with the crowd, but all went of their own accord. Declares, that many of the crowd had sticks in their hands, but no other weapons. Declares, that in the morning of the 4th, that the declarant was one of those who went for Mr. M'Diarmid, but did not go into the house. Declares, that no other paper as far as the declarant ever knew, except the one at Castle-Menzies, was ever made out, but he has heard murmurs, but no resolution actually formed about reducing the ministers' stipends, the schoolmasters' salaries, and the lairds' rents, and he never heard any proposal about the king being obliged to reside at Edinburgh, or about the excisemen not being allowed to go above a mile from their own houses. Declares, that he never saw or heard of any scroll of an act of parliament in the name of him the said Angus Cameron, or any other person. Declares, that he never heard of any proposal to seize arms in the gentlemen's houses, but, that he once heard of a proposal in case the French should invade the north coast of Scotland and attack Taymouth, of the people defending the cannon at Taymouth, and using them for the defence of Taymouth. Declares, that no resolution was formed to oppose the military, as this was not thought necessary, as sir John Menzies and the other gentlemen had signed the paper. Declares, that no offer was made from his part of the country to the people of Athol to assist them, but he has heard such offers were made from the low country about Blairgowrie. Declares, that on the

morning of Tuesday, the 5th, it was proposed by some of the crowd to take the gentlemen they had with them to Blair, but the declarant objected to this as did others, because the duke had no power to grant their desire. Declares, that when in Glasgow he was a member of none of the societies of the Friends of the People, nor of any other club except the Gaelic speaking club, which had nothing to do with politics. Declares, that about a fortnight or three weeks ago, he saw Mr. Winlack, bather in Perth, in the house of John M'Naughton, inn-keeper in Aberfeldy, where the conversation was about religion in general, but as far as he recollects not about Paine's Age of Reason, which pamphlet the declarant has read, as well as the answer to it. Declares, that after the declarant had got the people at Castle-Menzies divided into parties of forty-nine, so as they might act legally, the declarant having refused to act in any public capacity unless the people acted constitutionally, Sir John's factor and the other gentlemen by calling off their tenants, and by desiring the whole people not to form into parties of forty-nine, prevented this arrangement from being adhered to; upon which the declarant told the people he would not act at all unless compelled, as the people were not now adhering to the law when in larger parties than forty-nine. Declares, that sir John Menzies wishing there should be a spokesman for the whole, at first James Menzies in Tullychroi, who goes by the name of the East Indian, was brought forward by the people, but he being not liked by them on hearing him, they forced the declarant to come forward as their spokesman. Declares, that the declarant

knew nothing of the meeting of the 4th of September, till the people came to his house, and forced him with them. Declares, that at the time he was apprehended, several of his papers were seized and were sealed up by Mr. James Chalmers, sheriff substitute of Perthshire and sent to Perth, which papers were last night in his presence examined by the judge examiner, and the following papers taken therefrom and put up again and sealed, viz. nine letters, two songs, a draught or copy of a letter, and some jottings, and these papers being of this date marked and subscribed by the declarant and judge examiner, as relative to this declaration were again sealed up by the sheriff; of which papers those marked No. 1 and 2, are of the declarant's hand-writing, and the paper marked No. 3, upon examining it narrowly he rather thinks is not of his hand-writing, at least he does not recollect of having written such a paper, nor does he know of whose hand-writing it is. The declaration contained upon this and the nine preceding pages, including one marginal note on the 2nd page, two marginal notes on the 5th page, two marginal notes on the 7th page, and one marginal note on the 8th page, was read over to and adhered to by him in presence of William Ross, writer in Perth, James Paton, sheriff clerk of Perthshire, and Peter Deseret, writer in Perth and writer hereof, five words on the fifth page being deleted before signing.

(Signed) ANOUS CAMERON.
AB. CAMPBELL.
WILLIAM ROSS, *Witness*.
JAMES PATON, *Witness*.
PETER DESERET, *Witness*.

629. Proceedings before the Circuit Court of Justiciary holden at Perth, against DAVID BLACK and JAMES PATERSON, for Sedition and administering unlawful Oaths, Sept. 20th: 38 GEORGE III. A. D. 1798.

Curia Itineris Justiciarii S. D. N. Regis tenta in Prætorio Burgi de Perth, vicesimo die mensis Septembris, anno Domini millesimo septingentesimo et nonagesimo octavo, per honorabiles viros Joannem Swinton de Swinton et Dominum Gulielmum Nairne de Dunsinnan, Baronetum, duos ex Commissionariis Justiciaræ dicti S. D. N. Regis.

Curia legitimè affirmata.

THERE were produced criminal letters at the instance of his majesty's advocate against David Black, weaver, in Baffiesbrae, and James Paterson, weaver in ground of Pettencrief, both in the parish of Dunfermline and county of Fife, for the crime of sedition, in

manner therein specified, which criminal libel bears,

That where, by the laws of this, and of every other well-governed realm, SEDITION is a crime of an heinous nature and severely punishable; and whereas by an act passed in the 37th year of our reign, cap. 123, intituled, "An Act for more effectually preventing the administering or taking of unlawful Oaths," it is *inter alia*, statuted and ordained, "That any person or persons who shall in any manner or form whatsoever, administer or cause to be administered, or be aiding or assisting at, or present at, and consenting to the administering or taking of any oath or engagement purporting or intended to bind the person taking the same to engage in

"any mutinous or seditious purpose; or to disturb the public peace; or to be of any association, society, or confederacy, formed for any such purpose; or to obey the orders or commands of any committee or body of men not lawfully constituted; or of any leader or commander, or other person not having authority by law for that purpose: or not to inform or give evidence against any associate, confederate, or other person; or not to reveal or discover any unlawful combination or confederacy; or not to reveal or discover any illegal act done or to be done; or not to reveal or discover any illegal oath or engagement which may have been administered or tendered to or taken by such person or persons, or to or by any other person or persons, or the import of any such oath or engagement, shall, on conviction thereof by due course of law, be adjudged guilty of felony, and may be transported for any term of years not exceeding seven years; and every person who shall take any such oath or engagement, not being compelled thereto, shall, on conviction thereof, by due course of law, be adjudged guilty of felony, and may be transported for any term of years not exceeding seven years:" YET TRUE IT IS AND OF VERITY, That the said David Black and James Paterson above complained upon, are both or one or other of them guilty actors, or art and part of all and each, or one or other of the foresaid crimes: In so far as, in the course of the years 1796 and 1797, a number of seditious and evil disposed persons did, in different parts of Scotland, and particularly in the county of Fife, form themselves into a secret and illegal association, denominated "The Society of United Scotsmen," the object and purpose of which was, under pretext of reform, and of obtaining annual parliaments and universal suffrage, to create in the minds of the people a spirit of disloyalty to us and disaffection to the established government, and ultimately to excite them to acts of violence and opposition to the laws and constitution of this country; and which unlawful and seditious association, the more effectually to obtain its object, was systematically formed upon rules and regulations artfully adapted to the wicked purposes it had in view, such as the formation of small clubs or societies in various parts of the country, with officers belonging to each, such as president, secretary, and treasurer; the subdivision of these clubs or societies, when the number of individuals composing them amounted to sixteen into other clubs under similar regulations; the formation of committees called parochial, county, provincial, and national; the nomination of delegates from each society and committee to attend the higher committees; the election (by what is called) the National Committee of a Secret Committee consisting of seven members; the contributing of small sums to defray the

expense of delegates; the establishing of signs, and countersigns, and of private words, the better to conceal, as well as to promote the association; and lastly, the administering of oaths to those who were admitted members, binding them to persevere in endeavouring to obtain the objects of the association, and in defending to their utmost, those who might be prosecuted for their concern in such dangerous conspiracy; and above all, binding them to declare in the most solemn manner by what is called a test of secrecy, "That neither hopes, fears, rewards or punishments, should ever induce them, directly or indirectly, to inform on or give any evidence against any member or members of this, or similar societies for any act or expression of theirs done or made, collectively or individually, in or out of this society in pursuance of the spirit of this obligation," of which dangerous and seditious association, formed upon the principles above described, the said David Black and James Paterson, are active and distinguished members, and did in the course of the year 1797, themselves take at Dunfermline aforesaid, the different oaths, or obligations, the import and tendency of which have been now libelled; and did further on one or other of the days of the months of August, September, or October 1797, also at Dunfermline aforesaid, or at Goldfrum, in the said parish of Dunfermline, administer the same to others; and further, did on all occasions not only in the said town of Dunfermline, but in other places in that neighbourhood, wickedly and feloniously exert their utmost endeavours to promote the objects and purposes of the foresaid seditious and dangerous association, taking every opportunity of attending meetings of the turbulent and disaffected; and in those meetings by inveighing against the government and constitution of the country, doing all that in them lay to excite and increase a spirit of discontent, and ultimately of resistance to the established authorities. AND MORE PARTICULARLY, the said David Black and James Paterson did frequent and attend various meetings of this description, held in the house of John Nicol, ale-seller in Dunfermline, or of Isobel Moutry, his widow, also ale-seller there,—as also in the house of James Wilson, wright at Goldfrum, parish of Dunfermline, and county of Fife, and of Andrew Rutherford, at Goldfrum aforesaid, during the course of the months of November and December, 1797. As also of January, February, March, April, May, and June 1798; at many of which meetings the pamphlets, intituled "Paine's Rights of Man, and Age of Reason," with other flagitious and inflammatory publications were produced, read, and approved of; and the seditious and treasonable doctrines they contained, were recommended and enforced by the said David Black and James Paterson: and further, the said David Black and James Paterson, did most

wickedly and feloniously attempt to seduce from his duty and allegiance Henry Keys or Kees, soldier in the West Lowland fencible regiment, inveigling him to attend said seditious meetings, both in the houses of James Wilson and Andrew Rutherford above-mentioned, during the months of May and June last 1798, and then and there attempting by inflammatory harangues, to prevail on him to join their said wicked association; and to turn his arms against his king and country; and further at many of these meetings thus held in the houses of John Nicol, Isobel Moutry, his widow, James Wilson, and Andrew Rutherford, the said David Black and James Paterson did most traitorously express regret at the success of our arms, and sorrow for any bad fortune with which those of the French were attended; and had the audacity to vindicate the unnatural rebellion which has broke out in Ireland, and to represent the Irish insurgents as people groaning under oppression, and struggling in defence of their just rights: and further, the said James Paterson above complained upon, did on one or other of the days of August, September, or October last, 1797, within the house of the said James Wilson, at Golfdrum aforesaid, wickedly and feloniously admit him a member of the above described seditious association, and did then and there administer to him the oath above described, and did also communicate to him the private signs by which he might make himself known to the other united Scotsmen, members of this dangerous association; and the said David Black did within the house of the said James Wilson at Golfdrum aforesaid, on one or other of the days of August, September, October, or November last 1797, wickedly and feloniously admit James Henderson, weaver in the ground of Pittencrieff, a member of the said seditious society of United Scotsmen, and did then and there administer the oaths of said society to him, and gave him a pamphlet intituled, "Resolutions and Constitution of the Society of United Scotsmen," and likewise communicated to him the private sign, by which he might make himself known to other members of that dangerous association. And the said David Black having been apprehended and brought before James Moodie, esq. one of the sheriff substitutes for the county of Fife, did at Dunfermline on the 11th of June last in his presence emit a declaration: and the said James Paterson having been brought before the said James Moodie, esq. at Dunfermline, on the said 11th of June, did then and there, in his presence also emit a declaration. And both which declarations, as tending to show the guilt of the said David Black and James Paterson in the premises, together with the paper or pamphlet intituled, "Resolutions and Constitution of the Society of United Scotsmen," being to be used in evidence against them upon their trial, will for that purpose in due time

be lodged in the hands of the clerk of the circuit court of justiciary, before which they are to be tried, that they may have an opportunity of seeing the same. AT LEAST times and places above libelled, the aforesaid acts of sedition were committed, and the said oaths or obligations were administered as above mentioned, and the said David Black and James Paterson above complained upon, are both or one or other of them guilty actors, or art and part of all and each or one or other of said crimes. ALL WHICH, or part thereof being found proven by the verdict of an assize before our lord justice general, lord justice clerk and lords commissioners of justiciary in a circuit court of justiciary, to be holden by them or any one or more of their number within the criminal court house of Perth, upon the 20th day of September next to come, the said David Black and James Paterson, above complained upon, ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

Declaration of David Black libelled on.

COMPEARED David Black, weaver in Bufflesbrae in the ground of Pittencrieff, who, being examined, Declares, that he is not in the knowledge of any society existing in this country of the denomination of United Scotsmen at present, but adds, that some time in the course of last summer, he was sent for to speak to a person in the house of James Heltie, ale-seller in Dunfermline, but upon his calling at Heltie's house, found the man was gone; that thereafter another message came for him to go to the house of widow Nicol, likewise ale-seller in Dunfermline, and upon his calling at that house, he was shown into a room, where he found a stranger whom he had never seen before, and James Ritchie, weaver in Dunfermline, since deceased. That this stranger was about five feet six inches high, a broad stout man, brown hair and brown beard, of a fair complexion, had on a mixed coloured coat, and coarse worsted stockings, and from his appearance he imagined he might be about forty years of age. That the stranger said he was born in Scotland, but the declarant supposes he was an Irishman; Declares, that the stranger refused either to tell his name, or of what profession he was, and that he has never seen or heard any account of him since. That at this time the stranger took the declarant into a room by himself, and gave him a slip of paper, upon which was printed an oath, which he thinks was of the same nature with one now shown him, which is contained in a pamphlet intituled, "Resolutions and Constitution of the Society of United Scotsmen," viz. The oath called the "Test for Members" on the seventh page, and is marked with his initials as relative hereto. That the stranger did not administer the oath in any other way than by desiring the declarant to read it, but

does not now recollect whether he read it aloud or not. That they then returned to the room where they had left Ritchie, where they had a bottle of ale and a dram. That in the course of the conversation the declarant understood that the stranger had come from the west country, and intended going to the north. That the stranger said it was a difficult matter to deal with people of contrary dispositions, and that he was therefore obliged to give them their own way, as some of them had refused to take his test: that the stranger said as he had only one copy of the oath with him, he should write out a copy, and leave it with James Ritchie ere he left town; the declarant likewise saw the stranger give James Ritchie a direction to some person in Glasgow, who would furnish him with what intelligence or instruction he wanted, relative to the society. Declares, that he never was at any meetings of the society but twice; that both these meetings were held in the house of widow Nicol, when there was present David Anderson, late weaver in Dunfermline, now in Glasgow; the said James Henderson, journeyman weavers, with the said James Ritchie; that at last meeting, which was about the end of harvest, and before the business was discovered at Cupar, James Ritchie made a verbal report; that to the best of his recollection, the report was rather unfavourable as to the state of the society; as they were beginning to find that they had been misled by some persons from Ireland, who were the original founders of the society of United Scotsmen. That this society to which the declarant belonged, gave over their meetings in consequence of their observing from the news-papers that a person had been hanged in Ireland, who had been convicted of administering unlawful oaths; being interrogated, whether he ever administered any of these oaths of admission into the society of United Scotsmen to any person. Declares, that he never administered the oath to any person except one of the name of James Henderson, weaver in the ground of Pittencrieff; that this happened in the house of James Wilson, wright at Goldrum; that he does not remember the precise time when it was done, but that it was prior to the meeting when Ritchie made his report as formerly mentioned. Being interrogated, whether he knows that James Paterson, weaver, in the ground of Pittencrieff, is a member of the society of United Scotsmen, declares he does not know. Declares, that he has been present with one Henry Keys, a private in the West Lowland Fencible regiment, lately quartered in Dunfermline, that there were some other persons present whose names he does not recollect. That in the course of conversation, Keys said, that at the time the militia were ballotted for, if any mob or tumult had taken place upon the occasion, and had the regiment been called out and ordered

to fire, he would have been damned before he would have hurt one of them, meaning the mob. That at the time he administered the oath to James Henderson, he the declarant gave him a pamphlet containing resolutions and articles of the society's constitution, which Henderson read over, and being shown a pamphlet, intituled "Resolutions and Constitution of the Society of United Scotsmen," declares, it was one of the same kind which he gave Henderson to read over, and the copy now shown him is marked by him the declarant, as relative hereto, upon that seventh page thereof. Declares, that at that time he likewise communicated to Henderson a sign by which he could make himself known to any other members of the society, and that the sign was by putting a pin in the left sleeve of the coat with the head downwards, in the same way that the tailors put their needles into their sleeves. Declares, that he the declarant received the copy of the resolutions and constitution of the society from James Ritchie, who got a number of them sent him from Glasgow by the carrier, which Ritchie distributed to him and the other members of the society, all which the declarant declares to be truth, one word in the twenty-first, and four words in the twenty-second line of the sixth page of this declaration delete before signing. And in testimony of the truth of what is before stated, the declarant has subscribed each page, consisting of this and the preceding seven pages, place and date before mentioned, before and in presence of the witnesses following, viz. Messrs. Robert Hutton and David Stenhouse, both writers in Dunfermline.

(Signed)

DAVID BLACK.

JAMES MOODIE.

ROBERT HUTTON, *Witness.*DAVID STENHOUSE, *Witness.**Declaration of James Paterson libelled on.*

James Paterson, weaver, in the ground of Pittencrieff, being brought before the said James Moodie, esquire, place and date fore-said; and being interrogated whether he knows two young men lately enlisted with the artillery of the names of John Paterson and — Inglis, who are both by trade weavers; declares that according to his recollection he never was in company with either of them. Declares that he has heard that such a society existed, as that of the United Scotsmen, but does not know that any of these two lads were members of that society, except from report; declares that he never was a member of the said society. Being shown a pamphlet intituled "Resolutions and Constitution of the Society of United Scotsmen," and interrogated whether he had ever before seen any copy of it: declares that he remembers to have received one from James Ritchie, late weaver in Dunfermline, now deceased, who requested of him to become a member, but he

refused to take the oaths, although he does not now recollect whether he might have given Ritchie a promise of secrecy or not; declares that he received some signs from Ritchie, by which he might make himself known to the other members; that he does not now recollect particularly what these signs were, but thinks that one of them was by clasping the hands together, by intersecting the fingers, and another by putting a pin into the sleeve of the coat in a certain position. Being interrogated whether he ever admitted any members into the society, declares that about twelve months ago, he read over the regulations contained in the pamphlet above referred to, to James Wilson, wright at Goldfrum, and thereafter gave him the pamphlet, that he might read over the oaths himself, whom he at the same time told it was expected he would keep it a profound secret. That the declarant at that time likewise communicated to Wilson the signs given him by Ritchie, and by which he, Wilson, might make himself known to the other members of the society. Interrogate whether he knows of any other persons who are members of the society of United Scotsmen, declares that from a conversation he had with Inglis, the recruit in the artillery, when one day in his, the declarant's shop, he had reason to believe that Inglis was a member, but cannot say whether Paterson the recruit was a member or not; declares, that he believes David Black, weaver at Buffie's-brae is a member of said society; and his reason for thinking so is, that David Black has given him the usual signs to that effect. Being interrogated whether he knows one William Craig, a packman, who was lately committed upon a charge of some seditious practices, declares, that he does not know Craig, but understands that he was in town last week or the week before; all which he declares to be truth: In testimony whereof he has subscribed each page of this declaration, consisting of this and the three preceding pages, along with the said James Moodie, before these witnesses, Robert Hutton and David Stenhouse, both writers in Dunfermline.

(Signed) JAMES PATERSON
JAMES MOODIE—
ROBERT HUTTON, *Witness*.
DAVID STENHOUSE, *Witness*.

The said David Black being called upon to compare and underlye the law for the foresaid crime; and failing to compare,

The lords Swinton and Dunsinnan, decern, adjudge, and declare the said David Black to be an outlaw and fugitive from his majesty's laws; and ordain him to be put to the horn, and all his moveable goods and gear to be escheat and inbrought to his majesty's use, for his not comparing this time and place, in the hour of cause, to underlye the law for the crime of sedition, specified in the criminal letters raised against him thereanent,

he being lawfully summoned for that effect, called in court, and at the door of the court-house, and failed to appear; and the said lords declare the bail-bond granted for his appearance forfeited; and ordain the penalty to be paid to the clerk of this circuit-court, to be applied as the court of judicatory shall direct.

(Signed) JOHN SWINTON, P.

Intran,

James Paterson, weaver, in ground of Pit-tencrieff, in the parish of Dunfermline, panel,

Indicted and accused at the instance of his majesty's advocate, for his majesty's interest, of the crime of sedition, as specified in the criminal libel raised and pursued against him thereanent, before recorded.

The libel being read over, the panel pled Not Guilty.

Procurators for the Prosecutor.—The Advocate Depute; Mr. Joseph M'Cormick, advocate.

Procurators for the Panel.—Mr. John Clerk, and Mr. John Hagart, advocates.

The lords Swinton and Dunsinnan, having considered the libel against the said James Paterson, panel, find the same relevant to infer the pains of law: But allow the panel a proof of all facts and circumstances that may tend to exculpate him, or alleviate his guilt, and remit the panel with the libel as found relevant to the knowledge of an assize.

(Signed) JOHN SWINTON, P.

The following persons were named on the assize of the panel, viz.

Francis M'Nab of M'Nab.

Hope Stewart of Ballechan.

Charles Campbell of Lochdochart.

Robert Stewart of Clochfoldich.

James Stewart of Derculich.

James Inclies, merchant in Dunkeld.

Charles Husband, writer in Perth.

William Graham, merchant in Perth.

James Cruikshank of Langley-park.

David Lyell of Gally.

Hercules Ross of Rossie.

David Carnegie of Craigo.

Robert Ouchterlony in Montrose.

Thomas Erskine of Cambo.

James Cheaps of Strathtyrum.

Who were all lawfully sworn, and no objection made.

The advocate depute adduced the following witnesses:

1. William Smith, writing-master in Newtown of Cupar.

2. John Aitken, weaver in Newtown of Cupar.

3. Walter Brown cleaner and bleacher in Cupar.

[This witness being a quaker, his solemn affirmation instead of his oath was taken.]

4. James Wilson, wright at Goldfrum near Dunfermline.

5. *Robert Hutton*, writer in Dunfermline.

6. *James Moodie*, sheriff substitute of the county of Fife.

[The declaration of the panel libelled on being proved by the two preceding witnesses, was read.]

7. *David Guild*, weaver at Golfdrum aforesaid.

8. *Henry Keys* soldier in the West Lowland Fencible regiment.

9. *Andrew Rutherford*, weaver at Golfdrum aforesaid.

10. *David Walls*, weaver at Golfdrum aforesaid.

11. *George Burt*, manufacturer back of the Dam, Dunfermline.

The advocate depute concluded his proof.

The procurators for the panel adduced the following witnesses;

1. *Andrew Rutherford*, weaver in Golfdrum.

2. *James Reid*, weaver there.

3. *John Drysdale*, weaver at Baldrigeburn.

The procurators for the panel concluded their proof.

The advocate depute summed up the evidence for the prosecutor, and Mr. Clerk addressed the jury on the part of the panel.

Lord Swinton charged the jury.

The jury returned the following verdict:

At Perth, the 20th day
of September, 1798 years.

The above assize having inclosed, made choice of the said Hope Stewart of Ballechan,

to be their chancellor, and the said Charles Husband, writer in Perth, to be their clerk, and having considered the criminal libel raised and pursued at the instance of his majesty's advocate for his majesty's interest, against James Paterson, panel, the interlocutor of relevancy pronounced thereon by the Court, the evidence adduced in proof of the libel, and evidence in exculpation, they, by a plurality of voices, find the said James Paterson guilty of sedition at common law; and they all in one voice find the other charge libelled against the panel, under the act of 37th of George the third, not proven. In witness whereof their said chancellor and clerk have subscribed these presents in their names, and by their appointment, place and date foresaid.

(Signed) HOPE STUART, Chancellor.
CHARLES HUSBAND, Clerk.

The lords Swinton and Dunsinnan, in respect of the verdict returned against the said James Paterson, panel; in terms of an act passed in the 25th year of the reign of his present majesty, intituled, "An Act for the more effectual Transportation of Felons and other Offenders in that part of Great Britain called Scotland;" order and adjudge, that the said James Paterson be transported beyond seas, to such place as his majesty, with advice of his privy council, shall declare and appoint; and that for the space of five years from this date, with certification to him that if, after being so transported, he shall during the foresaid space, be found at large, in any part of Great Britain, without some lawful cause, he shall suffer death; and grant warrant for detaining him in the tolbooth of Perth, till delivered over for transportation.

(Signed) JOHN SWINTON, P.

630. Proceedings on the Trials of JAMES O'COIGLY, otherwise called JAMES QUIGLEY, otherwise called JAMES JOHN FIVEY, ARTHUR O'CONNOR, Esq., JOHN BINNS,* JOHN ALLEN, and JEREMIAH LEARY, on an Indictment, charging them with High Treason: tried before the Court holden under a Special Commission at Maidstone in Kent, on Monday the 21st and Tuesday the 22nd days of May: 38 GEORGE III. A. D. 1798.†

ON the 28th of February, 1798, the prisoners were apprehended at Margate.

On the 6th of March the prisoners were committed to the Tower, by warrant from his grace the duke of Portland, one of his majesty's principal secretaries of state, on a charge of high treason.

On the 19th of March a special commission of Oyer and Terminer issued under the great seal of Great Britain, to enquire of certain high treasons and misprisions of treason committed within the county of Kent, and a special commission of gaol delivery as to all persons who were or should be in custody for such offences on or before the 10th of April following.

On the 7th of April the prisoners were removed by Habeas Corpora from the Tower to the county gaol at Maidstone.

On the 10th of April the special commissions were opened at the Sessions-house at Maidstone—Present, the right honourable lord Romney, lord lieutenant of the county; the honourable sir Francis Buller, baronet; and the honourable John Heath, esq. two of the justices of his majesty's court of Common-pleas, after which the Court adjourned to the next morning.

On the 11th of April the Court met, pursuant to adjournment; the sheriff delivered in the panel of the grand jury, which was called over, when the following gentlemen were sworn:

THE GRAND JURY.

Sir Edward Knatchbull, bart.
Sir John Gregory Shaw, bart.
Sir John Dixon Dyke, bart.
Sir William Geary, bart.
Charles Townsend, esq.
Henry Oxendon, esq.
William Hammond, esq.
George Polhill, esq.
Nicholas Roundell Toke, esq.
Lewis Gage, the younger, esq.

Edward Austen, esq.
George Grote, esq.
George Children, esq.
Francis Motley Austen, esq.
Edward Hussey, esq.
John Larkin, esq.
Thomas Brett, esq.
Edward Peach, esq.
Henry Woodgate, esq.
William Francis Woodgate, esq.
James Chapman, esq.
George Smith, esq.
George Talbot Hatley Foote, esq.

Mr. Justice Buller.—Gentlemen of the Grand Jury;—As we are convened here under a commission which his majesty has been pleased to direct for a special purpose, and not in the ordinary course of an assize, it may naturally be expected that I should say something on the occasion of our being thus assembled. To enable me to do that, I have no guide but the commissions which I bear, for no depositions are returned here according to the universal practice of an assize. Probably that has arisen from the circumstance that indictments for treason are usually prepared by the immediate officers of the crown, and not by the officers of this court. In many cases a different practice might be useful, because it is as material in treason as it is in felony, that the Court should be enabled to point out to a grand jury the leading features of the cases which are submitted to their consideration, and the circumstances to which it is most essential for them to apply their attention, when they consider the effect and bearing of the evidence which may be brought before them.

At present I know not any of the circumstances which are likely to be adduced against the prisoners, and therefore I can only deliver to you the law in general terms, as I find it laid down in our books, with the hope that some observations or other may be of assistance to you in the inquiries which you will have to make. If they should be found not to be applicable to the cases brought before you, and any questions should arise on which

* See his trial for uttering seditious words p. 595 of this volume.

† Taken in short hand by Joseph Gurney.

you may be desirous of obtaining information, the Court will at all times be ready to give you every assistance in their power.

From the commissions we learn that our enquiries are to be confined to the crimes of high treason and misprision of treason. It was the happiness of this country for a considerable series of years to be almost a stranger to the crime of treason, until the new principles and opinions which have been adopted in France unfortunately misled the minds of many unthinking people, and also furnished the discontented in this country with what they thought the probable means of subverting our existing laws and constitution, and introducing the system of anarchy and confusion which has fatally prevailed there. Powerful as these opinions have been in their effect in France, they cannot make way with the considerate part of this country; because they would destroy a constitution, under which experience has shown that men may live happily if they please, and they would establish nothing in its room which can secure the freedom, the liberty, or the property of the members of the community.

In our present state we have no danger to fear from the power of the supreme magistrate: he must on all occasions act by the advice or intervention of others, who can derive no authority from him which the laws do not sanction, and who are responsible for the advice they may afford, and punishable for the evil counsel they may give. No law can here be made to which the legislature themselves will not be equally liable with every other subject; and no better security can be devised against oppressive laws, than the certainty that if they be so, their makers will suffer by them.

There is not in this country one rule by which the rich are governed, and another for the poor. No man has justice meted out to him by a different measure on account of his rank or fortune, from what would be done if he were destitute of both. Every invasion of property is judged of by the same rule; every injury is compensated in the same way; and every crime is restrained by the same punishment, be the condition of the offender what it may. It is in this alone that true equality can exist in society. Different degrees are necessary for every government; and greater talents and industry will in the course of things give one man a superiority over another; and without some distinction and rank, the magistrate would want authority; virtue would be without one of its strongest incentives; and the prudent and industrious would remain on a footing with the idle and the dissipated.

If this be a fair description of the advantages of our constitution, it may be thought impossible that any number of persons in this country should wish to adopt any other form of government. But it is the observation of a very wise man,* that "he who goeth about

to persuade a multitude that they are not so well governed as they ought to be, shall never want attentive and favourable hearers, because they know the manifold defects whereunto every kind of regimen is subject; but the secret lets and difficulties which in public proceedings are innumerable and inevitable, they have not ordinarily the judgment to consider."

Among the unthinking and those who do not take a comprehensive view of the subject, much mischief may be done by artful and designing men, who aggravate the defects of one constitution; and dwell only on the advantages of others, and notwithstanding the imperfections of human wisdom, requiring unerring conduct from their governors, imputing every mischief of chance to ill design and corruption; and as a correction of all those evils, they teach the people that the government ought to be in their hands. They whom this latter argument may allure, would do well to consider whether any change of government can really better the condition of the body of the people. The actual exercise of power must, from its nature, be vested in a few; it may shift, where there is no monarchy, from the hands of one contending party to those of another; but the mass of the people must remain as they are, employed at the plough, the anvil, the loom, or in some occupation which will afford a maintenance and support. There is nothing which prevents men of abilities equal to great situations from obtaining in this country the highest offices and honours, of which the instances are numerous in every department.

But as no state can gratify the ambition and views of every one, who may feel his fortune wearing away, think his merit neglected, or his abilities employed on subjects below them; men of this description will look for times of trouble and confusion, as affording them opportunities which in the regular course of settled government cannot arise; when they may obtain in a day what no length of labour could have procured without the assistance of chance; when they may rise to sudden elevation by the downfall of others; and when from the general misery of their country, they may by possibility advance their own private interest. To guard against the machinations of such restless and turbulent spirits, the common law, and the statute law of the land have made various provisions, at the head of which the code of criminal law relating to high treason is to be found.

High treason by the old law of the land is said to consist in the imagination of the heart; but our ancestors wisely provided that no man should be tried for secret intentions only, and that any crime, of which he was accused, should not only be manifested by overt acts, but that such overt acts should be charged in the indictment, in order that the supposed offender might be apprized of the nature of

* Lord Bacon.

the case intended to be proved against him, and be prepared to give it such an answer as the truth would admit. This is one of the various instances in which our forefathers have been zealous to found a constitution which might preserve to their posterity the safety of their lives, and the security of their liberties, provided only that they kept themselves within the bounds of law common to all, and made for the benefit of all.

Of the different kinds of treason which are comprised within the statute of the 25 Edward 3rd, I presume it will suffice for every purpose of the present inquiry to select these two. First, the compassing or imagining the death of the king; and, secondly, adhering to the king's enemies, giving them aid and comfort within the realm or without. I will also take some notice of two very modern statutes, which may or may not be found applicable to these cases.

Besides the grosser cases of an immediate attack on the king's person, with a view to deprive him of life, there are many others which have been holden at all times to be overt acts of compassing and imagining his death. *Conspiring against the king's life*,—sending letters to invite other persons to provide weapons to effectuate his death,—meeting and consulting, or printing treasonable positions, to prove that the people ought to take the government into their own hands, or any other acts which have a manifest tendency to endanger his person, are overt acts to prove the compassing of his death.—And on this ground it has been determined that concerting with foreigners or others to procure an invasion of the kingdom, going abroad for that purpose, or even intending so to do, and taking any steps in order thereto, are overt acts of compassing the king's death. The mere taking boat in order to go on board a vessel with intention to go to France for the purpose of persuading the French to invade this kingdom, has been solemnly determined to be a sufficient overt act. These points have been long decided by judges eminently friendly to the principles of the Revolution, and the liberty of the subject, among whom was lord chief justice Holt, who was as sound a lawyer as most who ever presided in Westminster-hall, and who bore a considerable part in bringing about the revolution itself.

Under the head of adhering to the king's enemies, it might be sufficient to say that, any act by which it is intended to strengthen the enemy, and to weaken the king's hands, is adhering to the king's enemies. The bare sending, or conveying money, provisions, or intelligence, in order to be conveyed to the enemy, though the money or intelligence happens to be intercepted, and never gets to the hands of the enemy, has also been determined to be an act of treason. The reason assigned for which is, that the party in sending it did all he could, and the treason was

complete on his part, though it had not the effect he intended; in other words the sending, carrying or removing money, or intelligence for the purpose mentioned is an overt act, which marks and indicates the traitorous imagination of the heart.

In treason, all concerned are principals. Where many are acting together in the same traitorous designs, the act of each in pursuance of that design, is the act of the others, and all are equally guilty. Many acts in their nature can only be committed by the hand of one, but still they are rightly considered as the acts of all, who are privy and consenting to the design; and men's being in the same company when the design is in agitation, is a great evidence of their knowledge and consent.

Indictments for high treason generally run to a considerable length; for first they state the kind of treason which is imputed to the prisoner, and then they state the several facts done by the prisoner, which are intended to be established by evidence as proofs of the treason which is charged. Those are called overt acts, and are the most material for the attention of a jury. Though many such acts are charged in an indictment, yet if any one is satisfactorily proved, that is sufficient to convict the offender.

The statutes to which I alluded are, first, an act of the thirty-third year of the present king's reign, chapter the thirty-seventh, intitled, *An Act more effectually to prevent, during the present War between Great Britain and France, all traitorous correspondence with, or aid or assistance being given to, his Majesty's Enemies*. By that statute, amongst other things, it is enacted, that if any person should procure, for the purpose of being sent into France, any arms, stores, bills, gold or silver coin, or other articles therein-mentioned, without licence of the king or council, he shall be deemed a traitor, and suffer death as such, except it be under different circumstances, which can hardly apply to any case that can be brought before you.

The effect of that statute seems to me to be only to make the obtaining money and goods for the purpose of being sent into France, though never sent there, a distinct and positive treason, instead of being an overt act only of treason, as it was before the passing of that statute.

The other statute is an act made in the thirty-sixth year of the reign of his present majesty, by which it is enacted, "that if any person shall compass, imagine, or intend the death or destruction, or any bodily harm tending to death or destruction, maiming, or wounding, imprisonment or restraint of the person of the king, or to deprive or depose him from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his majesty's dominions or countries, or to levy war against the king within this realm, in order by force or constraint to compel him to change his measures or counsell,

or in order to put any force or constraint upon, or intimidate or overawe both Houses, or either House of Parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other of his majesty's dominions, or countries, under the obedience of his majesty, and shall express the same by publishing any printing, or writing, or by any overt act, or deed, every such person shall be deemed a traitor."

Whether this statute be merely an affirmation of the common law, or whether, like the former one, it makes those acts specific treasons which before were only overt acts of treason, is at this moment at least immaterial to discuss. Even if in any instance it has made that treason which was not so previous to the act, yet the principle of the bill has followed up what was the law before; and if there were a possibility of doubt what the law was before this statute, or the meanest capacity was not likely to comprehend it, the legislature undoubtedly acted wisely and humanely in making the law so plain, that no man could help understanding it.

I am not aware that there is any commitment for misprision of treason, and therefore I shall not detain you by any discussion of that offence.

Gentlemen, if these observations should in any degree tend to afford you relief or information in the course of your inquiries, the end and object of them will be fully answered; and if they do not, I hope I have not occupied any inordinate portion of your time.

On the same day the grand jury returned a true bill against James O'Coigly, otherwise called James Quigley, otherwise called James John Fivey; Arthur O'Connor, esq., John Binns, John Allen, and Jeremiah Leary, for high treason.

On the 14th of April the Court met pursuant to adjournment.—The prisoners were set to the bar.

Mr. Justice Buller informed the prisoners an indictment had been found against them for high treason, and that copies of that indictment would soon be delivered to them; that the Court proposed to adjourn to the 30th instant, when they would be arraigned, and their trials would probably be brought on the next day.

Mr. O'Connor stated that from the close confinement in which he had been kept, he had not had an opportunity of learning whether there would be any thing informal in his applying to have his trial put off; that not yet knowing what was the charge against him, he could not tell whether it might not be necessary for him to send to Ireland for some witnesses; but requested information from the Court.

Mr. Justice Buller said that it would not be informal, if he could make out a proper case for it, but advised him not to rely implicitly upon it.

At the request of the several prisoners, Mr. Gurney was assigned by the Court of counsel for John Binns, Mr. Ferguson of counsel for John Allen, and Mr. Scott of counsel for Jeremiah Leary.

The Attorney General moved that the sheriff be required to deliver to Mr. White, the solicitor for the treasury, who is to prosecute for the crown, a list of the persons returned to serve on the jury, which was accordingly directed.

On the 17th of April, Mr. White, solicitor for the Treasury, caused to be delivered to each of the prisoners a copy of the caption and indictment, a list of the petit jurors returned by the sheriff, and a list of the witnesses to be produced by the crown for proving the said indictment.

On the 28th of April, at the request of the prisoners, Mr. Plumer was assigned of counsel for James O'Coigly and Arthur O'Connor, and Mr. Dallas of counsel for all the prisoners.

Sessions-house, Maidstone. Monday, April 30th, 1798.

[The Court met pursuant to adjournment.]

Present.—The right hon. lord Romney; the hon. sir Francis Buller, bart., and the hon. John Heath, esq.; two of the justices of his majesty's Court of Common Pleas. The hon. sir Soulden Lawrence, knt., one of the justices of his majesty's Court of King's-bench; and Samuel Shepherd, esq.; one of his majesty's serjeants at law.

James O'Coigley, otherwise called James Quigly, otherwise called James John Fivey, Arthur O'Connor, esq.; John Binns, John Allen, and Jeremiah Leary, were set to the bar.

The Counsel for the Prisoners stated that there were several variations in the copies of the indictment which had been delivered to the prisoners, but at the same time mentioned that they made the objection with a view to postpone the trial.

The following affidavits being put into court, and the attorney-general consenting to the trials being postponed till the 21st of May, the counsel for the defendants waved their objections, and the prisoners were immediately arraigned upon the indictment, to which they severally pleaded not guilty.

Kent to wit.—The king against James O'Coigley, otherwise called James Quigley, otherwise called James John Fivey, Arthur O'Connor, esq., John Binns, John Allen, and Jeremiah Leary.

James O'Coigly, sued by the several names above-mentioned, and the above-named Arthur O'Connor, John Binns, John Allen, and Jeremiah Leary, all now prisoners in the gaol at Maidstone, in the county of Kent;

John Simmons, of Rochester, in the county of Kent, solicitor for the said Arthur O'Connor and Jeremiah Leary; John Augustus Bonney,* of Percy-street, in the parish of St. Pancras, in the county of Middlesex, solicitor for the said John Binns and John Allen; and John Foulkes, of Hart-street, in the parish of St. George, Bloomsbury, in the said county of Middlesex, solicitor for the said James Coigley, severally make oath and say—

And first the said Arthur O'Connor for himself saith, that William Cox, gunsmith, — Chambers, bookseller, — Drennan,† doctor of physic, Jeremiah Hassett, warden of the tower of Dublin, Eleanor Hassett, wife of the said Jeremiah Hassett, Matthew Smith, gent. William Dowdall, gent., general Hutchinson,‡ — Mercer, esq., general Richard Cradock, and Standish O'Gready, are material witnesses for him this deponent, without whose testimony he cannot safely proceed upon his defence at the trial of this indictment. And this deponent farther saith, that the said William Cox, — Chambers, — Drennan, Jeremiah Hassett, Eleanor Hassett, William Dowdall, — Mercer, general Richard Cradock, and Standish O'Gready, are resident in the city of Dublin, in the kingdom of Ireland; and that the said Matthew Smith is resident at Belfast, in the said kingdom of Ireland; and that the said general Hutchinson is resident at the head quarters of the army in the said kingdom of Ireland.

And the said James Coigley for himself saith, that Bernard Coile and Valentine Derry are material witnesses for him this deponent, without whose testimony he cannot safely proceed upon his defence at the trial of this indictment. And this deponent farther saith, that the said Bernard Coile and Valentine Derry are both resident in or near the city of Dublin.

And the said Arthur O'Connor and James Coigley, John Binns, John Allen, and Jeremiah Leary, farther severally say, that being kept in close confinement, without access to persons or papers, they were not acquainted with the nature of the charges against them, and did not know what witnesses they should respectively have occasion to produce on their behalf until the delivery of the copy of the indictment, and of the list of witnesses on the part of the prosecution, and that the same were delivered to these deponents respectively at or about nine of the clock in the evening of the 17th day of April, instant, and not before.

And these deponents Arthur O'Connor and James Coigley farther severally say, that immediately after the delivery of the copies of

the said indictment and list of witnesses they respectively consulted their said solicitors relative to the sending a proper person to Ireland for the purpose of procuring the attendance of the said witnesses on their respective behalfs upon the trial of this indictment.

And this deponent John Simmons for himself saith, that he sent a copy of the said indictment and list of witnesses to London in the morning of the 18th day of April instant, for the consideration and advice of Thomas Plumer and Robert Dallas, esqrs. the counsel intended to be assigned for the said Arthur O'Connor and James Coigley; and that the said John Foulkes, another of the above-named deponents arrived at Maidstone on the night of the said 18th instant, and informed this deponent that the said counsel, so as aforesaid intended to be assigned for the said Arthur O'Connor and James Coigley, were of opinion that the attendance of the said witnesses on behalf of the said Arthur O'Connor and James Coigley respectively was material and necessary; and this deponent farther saith, that in consequence thereof, he this deponent did on the morning of the 19th day of April instant, obtain from the said Arthur O'Connor the addresses of the said several witnesses on his behalf, with instructions to send immediately to Ireland for the purpose of procuring their attendance on his behalf at the said trial, and that he delivered the said address and instructions to the said John Foulkes to be forwarded by a proper person to Ireland.

And this deponent John Foulkes for himself saith, that he did on the morning of the said 19th day of April instant, obtain from the said James Coigley the addresses of the said witnesses to be produced on his behalf, with instructions to send the same by the person intended to be employed by or on the behalf of the said Arthur O'Connor to Ireland, to procure their attendance on his behalf on the said trial; and that he this deponent did on the same day receive from the said John Simmons the addresses of the said witnesses of the said Arthur O'Connor, with the said instructions of the said Arthur O'Connor relating thereto.

And this deponent farther saith, that he immediately delivered the said several addresses and instructions so received by him from the said James Coigley and John Simmons respectively, to John Augustus Bonney another of the said deponents, to be taken immediately by him to London, and to be forwarded from thence without delay by a proper person to Ireland, for the purposes aforesaid.

And the said John Augustus Bonney for himself saith, that he did set out by the first coach that went from Maidstone after he received the said addresses and instructions, and arrived in London about nine of the clock in the evening of the said 19th instant; and that this deponent on the morning of the 20th in-

* He was one of the persons indicted with Hardy and Horne Tooke for high treason, in the year 1794. See their trials in the 24th and 25th vols. of this collection.

† As to him, see the trial of Mr. Hamilton Rowan, *ante*, vol. 22, p. 1033.

‡ In 1801 created lord Hutchinson.

stant made inquiries for a proper person to be sent to Ireland to procure the attendance of the said witnesses, but that he was not able to procure such person, whereupon a special messenger was sent to Maidstone aforesaid to desire the said John Foulkes to come to town immediately for the purpose of his going to Ireland to procure the attendance of the said witnesses.

And this deponent John Foulkes for himself farther saith, that at or about seven o'clock in the evening of the said 20th day of April instant, he this deponent received a letter by a special messenger desiring this deponent to set out for London the moment he received the same, as it was necessary he should go to Ireland, and it could not be dispensed with, and also informing this deponent that the said messenger had been directed to order horses for him this deponent on the road, which the said messenger informed this deponent he had done accordingly; and this deponent farther saith, that being too ill to undertake the journey he sent back a letter to that effect immediately by the same messenger to inform the counsel of the said defendants thereof, and that he this deponent would nevertheless be in London thereupon early the next morning, which said last-mentioned letter this deponent gave the said messenger strict orders to deliver that night without fail, with instructions to order horses to be ready for this deponent on the road early the next morning.

And deponent further saith that he did accordingly set out from Maidstone in a chaise the next morning, at or before six o'clock, and on his arrival in London made inquiries for several persons whom he thought fit and proper to be sent to Ireland for the purposes aforesaid, but that no such person was found till the afternoon of that day, when Joshua Luccock Wilkinson, of Gray's Inn, in the county of Middlesex, attorney at law, agreed to go for the said purposes; and this deponent saith, that about six o'clock in the evening of that day, he this deponent delivered the said addresses of the said several witnesses, together with the said instructions so received by this deponent from the said James Coigley and John Simmons as aforesaid, to the said Joshua Luccock Wilkinson, who set out that evening by the mail coach for Ireland, with the said addresses and instructions as deponent is informed and verily believes, and also with instructions to return with all possible expedition, and that the said Joshua Luccock Wilkinson is not yet returned from the said journey; and the said Arthur O'Connor and James Coigley further severally say they respectively believe that the said several persons will attend as witnesses on their respective behalfs upon the said trial, if this honourable Court will allow a sufficient time for their arrival from Ireland.

And lastly, the said John Binns, John Allen, and Jeremiah Leary, for themselves severally say, that they are advised by their

counsel and verily believe that the said witnesses from Ireland, intended to be produced by or on behalf of the said Arthur O'Connor and James Coigley, are material witnesses for each of these deponents, without whose testimony they could not safely proceed upon their respective defences at the trial of this indictment.

All the eight deponents were sworn in court, at Maidstone, in the county of Kent, the 30th of April, 1798, before

James Coigley.
A. O'Connor.
John Binns.
John Allen.
J. Leary.
J. Simmons.
J. Aug. Bonney.
John Foulkes.

F. BULLER.

Kent to wit.—The king against James O'Coigley, otherwise called James Quigley, otherwise called James John Fivey, Arthur O'Conner, esq., John Binns, John Allen, and Jeremiah Leary.

James Coigly, sued by the several names above mentioned, and the above named Arthur O'Conner, John Binns, John Allen, and Jeremiah Leary, all now prisoners in the gaol at Maidstone, in the county of Kent, severally make oath—

That the application made to this honourable Court, for putting off the trials of these deponents respectively, is not made for the purpose of delay, but merely on account of the materiality of the evidence of the several witnesses, mentioned in the other affidavit made by these deponents, in this prosecution, who are expected from Ireland on behalf of these deponents respectively, and without whose testimony they cannot safely proceed upon their respective defences to this indictment.

All the five deponents were sworn in Court at Maidstone, in the county of Kent, the 30th April, 1798, before

James Coigley.
A. O'Connor.
John Binns.
John Allen.
Jeremiah Leary.

F. BULLER.

CAPTION.—*Kent to wit.* Be It Remembered, That at a Special Session of Oyer and Terminer and Gaol Delivery holden at Maidstone in and for the County of Kent on Tuesday the tenth day of April in the thirty-eighth Year of the Reign of our Sovereign Lord George the Third King of Great Britain and so forth Before the Honourable Sir Francis Buller Baronet one of the justices of our said Lord the King of his Court of Common Pleas the Honourable John Heath Esquire one other of the Justices of our said Lord the King of his Court of Common Pleas and others their fellow Justices and Commissioners of our said Lord the King assigned by Letters Patent of our said Lord the King under the Great Seal of Great Britain to the said Sir Francis Buller John Heath and others their fellows Justices and Commissioners of our said Lord the King and to any two or

more of them made and directed of whom one of them the said Sir Francis Buller and John Heath or of others in the said Letters Patent named our said Lord the King willd to be one to inquire by the Oath of Good and Lawful Men of the County aforesaid of all High Treasons and Misprisions of High Treason other than such as relate to the Coin of our said Lord the King within the County aforesaid as well within Liberties as without by whomsoever and in what manner soever done committed or perpetrated when how and after what manner and of all other Articles and Circumstances concerning the Premises and every of them or any of them in any manner whatsoever and the said Treasons and Misprisions of Treason according to the Laws and Customs of England for this time to hear and determine And also Justices and Commissioners of our said Lord the King assigned and constituted by Letters Patent of our said Lord the King under the Great Seal of Great Britain to the said Sir Francis Buller John Heath and others their fellows Justices and Commissioners of our said Lord the King and to any two or more of them made and directed of whom one of them the said Sir Francis Buller and John Heath or of others in the said last mentioned Letters Patent named our said Lord the King willd to be one to deliver the Gaol of our said Lord the King of the County aforesaid of the prisoners therein being and detained on the nineteenth Day of March in the thirty-eighth Year aforesaid or who should be therein detained before this present tenth Day of April in the same year for or on account of any High Treasons or Misprisions of High Treason other than such as relate to the Coin of our said Lord the King by whomsoever and in what manner soever done committed or perpetrated and when That same Session of Oyer and Terminer and Gaol Delivery is adjourned by the same Justices and Commissioners of our said Lord the King above named and others their fellows aforesaid to be holden at Maidstone aforesaid in and for the County aforesaid on Wednesday the eleventh Day of this present month of April in the thirty-eighth year aforesaid Upon which said Wednesday the eleventh day of this present Month of April in the thirty-eighth year aforesaid the same Session of Oyer and Terminer and Gaol Delivery is holden by the adjournment aforesaid at Maidstone aforesaid in and for the County aforesaid before the said Justices and Commissioners of our said Lord the King above named and others their fellows aforesaid and thereupon at the same Session of Oyer and Terminer and Gaol Delivery holden by the adjournment aforesaid at Maidstone aforesaid in and for the County aforesaid on the said Wednesday the eleventh day of April in the thirty-eighth year aforesaid before the said Justices and Commissioners of our said Lord the King above named and others their fellows aforesaid By the oath

of Sir Edward Knatchbull Baronet Sir John Gregory Shaw Baronet Sir John Dixon Dyke Baronet Sir William Geary Baronet Charles Townshend Esquire Henry Oxendon Esquire William Hammond Esquire George Polhill Esquire Nicholas Roundel Teke Esquire Lewis Cage the younger Esquire Edward Austin Esquire George Grote Esquire George Children Esquire Francis Motley Austin Esquire Edward Hussey Esquire John Larken Esquire Thomas Brett Esquire Edward Peach Esquire Henry Woodgate Esquire William Francis Woodgate Esquire James Chapman Esquire George Smith Esquire and George Talbot Hatley Foote Esquire Good and Lawful Men of the County aforesaid now here sworn and charged to inquire for our said Lord the King for the body of the said County touching and concerning the Premises in the aforesaid several Letters Patent mentioned It is presented in manner and form as followeth that is to say

INDICTMENT. — *Kent to wit.* The Jurors for our Lord the King upon their oath present that long before and at the several times hereinafter mentioned the persons exercising the powers of government in France and the men of France under the government of the said persons were open and public enemies of our said Lord the King and prosecuted and carried on open and public war against our said Lord the King to wit at Margate in the County of Kent and that James O'Coigly late of Margate in the county of Kent labourer otherwise called James Quigley late of the same place labourer otherwise called James John Fivey late of the same place labourer Arthur O'Connor late of the same place Esq John Binns late of the same place labourer John Allen late of the same place labourer and Jeremiah Leary late of the same place labourer being subjects of our said Lord the King and well knowing the premises but not having the fear of God in their hearts nor weighing the duty of their allegiance and being moved and seduced by the instigation of the devil as false traitors against our said Lord the King and wholly withdrawing the love obedience fidelity and allegiance which every true and faithful subject of our said Lord the King should and of right ought to bear towards our said Lord the King on the twenty-seventh day of February in the thirty-eighth year of the reign of our said Sovereign Lord George the Third by the grace of God King of Great Britain France and Ireland Defender of the Faith &c. and on divers other days and times as well before as after with force and arms at Margate in the county of Kent maliciously and traitorously did amongst themselves and together with divers other false traitors whose names are to the said jurors unknown conspire compass imagine and intend to bring and put our said Lord the King to death

And to fulfil perfect and bring to effect their most evil and wicked treason and trea-

onable compassing and imagination aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid with force and arms on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid and on divers other days and times as well before as after at Margate in the county of Kent maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to stir up raise and make rebellion and war against our said Lord the King within this kingdom and to incite encourage move and persuade the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid with force and arms on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid at Margate in the county of Kent maliciously and traitorously did procure and obtain and in their custody and possession conceal and keep a certain paper writing theretofore composed and prepared to signify and represent and cause to be signified and represented to the aforesaid enemies of our said Lord the King that divers of the subjects of our said Lord the King were ready to assist the said enemies of our said Lord the King in case the said enemies of our said Lord the King should make or cause to be made an hostile invasion of this kingdom with ships and armed men; to prosecute and wage war against our said Lord the King within this kingdom and containing incitements encouragements and persuasions to incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made such invasion as aforesaid to prosecute and wage war against our said Lord the King within this kingdom and also containing information and intelligence of and concerning the supposed dispositions of divers of the subjects of our said Lord the King towards our said Lord the King and his government and of and concerning the revenue of our said Lord the King and the means used to raise and increase the same and the supposed failure of such means with intent that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might unlawfully and traitorously carry and convey and cause to be carried and conveyed

the said paper writing to parts beyond the seas to be delivered to certain persons of the said enemies of our said Lord the King such persons being called in the said paper writing the Executive Directory of France and might thereby incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did treat and bargain and cause and procure a treaty and bargain to be had and made with one Thomas Norris and one John Foreman concerning and for the hire of a vessel and did then and there by such treaty and bargain and by promise of money endeavour to obtain and hire a vessel to sail and go from this kingdom unto and into parts beyond the seas in order that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might be conveyed and carried in such vessel from this kingdom unto and into parts beyond the seas and might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said paper writing to certain persons of the aforesaid enemies of our said Lord the King such persons being called in the said paper writing the Executive Directory of France

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did make a proposal to and treat with and cause and procure a proposal and treaty to be made and had to

and with one Robert Campbell concerning and for the hire of a certain other vessel and did then and there by such proposal and treaty endeavour to obtain and hire such vessel as last aforesaid to sail and go from this kingdom unto and into parts beyond the seas in order that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might be carried and conveyed in the said last-mentioned vessel from this kingdom unto and into parts beyond the seas and might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said paper writing to certain persons of the aforesaid enemies of our said Lord the King such persons being called in the said paper writing the Executive Directory of France

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did make a proposal and cause and procure a proposal to be made to one Jeremiah Mowle concerning and for the hire of a certain other vessel and did then and there by such proposal endeavour to obtain and hire such vessel as last aforesaid to sail and go from this kingdom unto and into parts beyond the seas in order that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might be carried and conveyed in the said last mentioned vessel from this kingdom unto and into parts beyond the seas and might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said paper writing to certain persons

of the aforesaid enemies of our said Lord the King such persons being called in the said paper writing the Executive Directory of France

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did meet and assemble themselves together having the said paper writing secretly and traitorously in their custody and possession in order to consult upon devise contrive discover and settle the means of going and passing and in order to go and pass from and out of this kingdom unto and into parts beyond the seas with intent that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said paper writing to certain persons of the aforesaid enemies of our said Lord the King such persons being called in the said paper writing the Executive Directory of France

And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassing and imagination aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did repair and go to a certain house situate at Margate aforesaid in the said county of Kent called the King's-Head in order to discover procure and provide the means of going and passing and in order to go and pass from and out of this kingdom unto and into parts beyond the seas with intent that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of

our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom in contempt of our said Lord the King and his laws to the evil example of all others in the like case offending contrary to the duty of the allegiance of them the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary against the form of the statute in such case made and provided and against the peace of our said Lord the King his crown and dignity

And the Jurors aforesaid upon their oath aforesaid do further present that the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary being subjects of our said Lord the King as aforesaid as false traitors against our said Lord the King during the said war to wit on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid and on divers other days and times as well before as after with force and arms at Margate in the county of Kent unlawfully and traitorously were adhering to and aiding and comforting the aforesaid enemies of our said Lord the King and in pursuance performance and execution of their treason and treasonable adhering aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid with force and arms on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid and on divers other days and times as well before as after at Margate in the county of Kent maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to stir up raise and make rebellion and war against our said Lord the King within this kingdom and to incite encourage move and persuade the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom

And in further pursuance performance and execution of their treason and treasonable adhering aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid with force and arms on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid at Margate in the county of Kent maliciously and traitorously did procure and

obtain and in their custody and possession conceal and keep a certain paper writing theretofore composed and prepared to signify and represent and cause to be signified and represented to the aforesaid enemies of our said Lord the King that divers of the subjects of our said Lord the King were ready to assist the said enemies of our said Lord the King in case the said enemies of our said Lord the King should make or cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and containing incitements encouragements and persuasions to incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made such invasion as aforesaid to prosecute and wage war against our said Lord the King within this kingdom and also containing information and intelligence of and concerning the supposed dispositions of divers of the subjects of our said Lord the King towards our said Lord the King and his Government and of and concerning the revenue of our said Lord the King and the means used to raise and increase the same and the supposed failure of such means with intent that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might unlawfully and traitorously carry and convey and cause to be carried and conveyed the said last mentioned paper writing to parts beyond the seas to be delivered to certain persons of the said enemies of our said Lord the King such persons being called in the said last-mentioned paper writing the Executive Directory of France and might thereby incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom

And in further pursuance performance and execution of their treason and treasonable adhering aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did treat and bargain and cause and procure a treaty and bargain to be had and made with one Thomas Norris and one John Foreman concerning and for the hire of a vessel and did then and thereby such treaty and bargain and by promise of money endeavour to obtain and hire a vessel to sail and go from this kingdom unto and into parts beyond the seas in order that they the said James O'Coigly otherwise called James Quigley otherwise called James

John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might be conveyed and carried in such vessel from this kingdom unto and into parts beyond the seas and might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said last mentioned paper writing to certain persons of the aforesaid enemies of our said Lord the King such persons being called in the said last mentioned paper writing the Executive Directory of France

And in further pursuance performance and execution of their treason and treasonable adhering aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did make a proposal to and treat with and cause and procure a proposal and treaty to be made and had to and with one Robert Campbell concerning and for the hire of a certain other vessel and did then and there by such proposal and treaty endeavour to obtain and hire such vessel as last aforesaid to sail and go from this kingdom unto and into parts beyond the seas in order that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might be carried and conveyed in the said last-mentioned vessel from this kingdom unto and into parts beyond the seas and might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said last-mentioned paper writing to certain persons of the aforesaid enemies of our said Lord the King such persons being called in the said last-mentioned paper writing the Executive Directory of France

And in further pursuance performance and execution of their treason and treasonable adhering aforesaid they the said James

O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did make a proposal and cause and procure a proposal to be made to one Jeremiah Mowle concerning and for the hire of a certain other vessel and did then and there by such proposal endeavour to obtain and hire such vessel as last aforesaid to sail and go from this kingdom unto and into parts beyond the seas in order that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might be carried and conveyed in the said last-mentioned vessel from this kingdom unto and into parts beyond the seas and might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said last-mentioned paper writing to certain persons of the aforesaid enemies of our said Lord the King such persons being called in the said last-mentioned paper writing the Executive Directory of France

And in further pursuance performance and execution of their treason and treasonable adhering aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate aforesaid in the said county of Kent maliciously and traitorously did meet and assemble themselves together having the said last-mentioned paper writing secretly and traitorously in their custody and possession in order to consult upon devise contrive discover and settle the means of going and passing and in order to go and pass from and out of this kingdom unto and into parts beyond these as with intent that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile

invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom and might for the purpose of such incitement encouragement persuasion and procurement as last aforesaid deliver and cause to be delivered the said last-mentioned paper writing to certain persons of the aforesaid enemies of our said Lord the King such persons being called in the said last-mentioned paper writing the Executive Directory of France

And in further pursuance performance and execution of their treason and treasonable adhering aforesaid they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid with force and arms at Margate in the county of Kent maliciously and traitorously did repair and go to a certain house situate at Margate aforesaid in the said county of Kent called the King's Head in order to discover procure and provide the means of going and passing and in order to go and pass from and out of this kingdom unto and into parts beyond the seas with intent that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor, John Binns John Allen and Jeremiah Leary might in parts beyond the seas give advice information comfort aid and assistance to the said enemies of our said Lord the King and incite encourage persuade and procure the said enemies of our said Lord the King to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom in contempt of our said Lord the King and his laws to the evil example of all others in the like case offending contrary to the duty of the allegiance of them the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary against the form of the statute in such case made and provided and against the peace of our said Lord the King his crown and dignity

And the Jurors aforesaid upon their oath aforesaid do further present that the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary being subjects of our said Lord the King as aforesaid as false traitors against our said Lord the King after the eighteenth day of December which was in the year of our Lord one thousand seven hundred and ninety-five to wit on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid and on divers other days and times as well before as after the said last-mentioned day with force and arms within

this realm to wit at Margate in the county of Kent maliciously and traitorously did compass imagine invent devise and intend to move and stir certain foreigners and strangers that is to say the aforesaid persons exercising the powers of government in France and the men of France under the government of the said persons with force to invade this realm and the same last-mentioned compassings imaginations inventions devices and intentions did then and there express utter and declare by divers overt acts and deeds hereinafter mentioned that is to say

In order to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings imaginations inventions devices and intentions last mentioned they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary as such false traitors as aforesaid with force and arms on the twenty-seventh day of February in the thirty-eighth year of the reign aforesaid and on divers other days and times as well before as after at Margate in the county of Kent maliciously and traitorously did assemble meet conspire consult and agree amongst themselves and together with divers other false traitors whose names are to the said jurors unknown to incite encourage move and persuade the said foreigners and strangers to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom

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the King within this kingdom and also containing information and intelligence of and concerning the supposed dispositions of divers of the subjects of our said Lord the King towards our said Lord the King and his Government and of and concerning the revenue of our said Lord the King and the means used to raise and increase the same and the supposed failure of such means with intent that they the said James O'Coigly otherwise called James Quigley otherwise called James John Fivey Arthur O'Connor John Binns John Allen and Jeremiah Leary might unlawfully and traitorously carry and convey and cause to be carried and conveyed the said last-mentioned paper writing to parts beyond the seas to be delivered to certain persons of the said foreigners and strangers such persons being called in the said last-mentioned paper writing the Executive Directory of France and might thereby incite encourage persuade and procure the said foreigners and strangers to make and cause to be made an hostile invasion of this kingdom with ships and armed men to prosecute and wage war against our said Lord the King within this kingdom

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On Monday, May the 21st, 1798, the Court met, pursuant to adjournment, at seven o'clock in the morning.

Present—The right hon. lord Romney; the hon. Mr. Justice Buller; the hon. Mr. Justice Heath; the hon. Mr. Justice Lawrence; and Mr. Serjeant Shepherd.

Counsel for the Crown.

Mr. Attorney General [sir John Scott, afterwards lord chancellor Eldon].

Mr. Solicitor General [sir John Mitford, afterwards lord Redesdale and lord chancellor of Ireland].

Mr. Garrow [afterwards a baron of the court of Exchequer].

Mr. Adam [afterwards lord chief commissioner of the Jury Court and a baron of the court of Exchequer of Scotland, and one of his majesty's most honourable privy council].

Mr. Fielding.

Mr. Abbott [afterwards lord chief justice of the court of King's-bench.]

Solicitor.—Joseph White, esq. solicitor for the affairs of his majesty's Treasury.

Counsel for the Prisoners assigned by the Court.

Mr. Plummer [afterwards successively vice-

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the dean of St. Asaph,

chancellor of England, and master of the Rolls].

Mr. Dallas [afterwards lord chief justice of the court of Common Pleas]. Mr. Gurney, Mr. Ferguson, Mr. William Scott.

Assistant Counsel.—Mr. George Smith.

Solicitors.—Mr. Simmons, of Rochester, Mr. John Foulkes, and Mr. Bonney, of London.

James O'Coigly, otherwise called James Quigley, otherwise called James John Fivey; Arthur O'Connor, esq. John Binns; John Allen; and Jeremiah Leary, were set to the bar.

Mr. Plumer.—I hope your lordships will do me the justice to believe that it is with great uneasiness I feel myself under the necessity of interrupting the proceedings of the present day; but I am sure your lordships will feel that it was incumbent upon me not to delay a single moment in stating to you the contents of the affidavit that I have in my hand; which contains a charge of the foulest nature; one of the grossest contempts of the Court, and one of the most daring attempts to violate public justice, that ever was heard of.

I feel it incumbent upon me to prevent for a single moment any impression being made to the prejudice of the gentlemen who are concerned for the prosecution, by stating that I do not in the least mean, directly or indirectly, to impute in the smallest degree to any one of them, or to any person concerned in the prosecution, the foul charge that I am now to state to your lordships.—When it was first stated to me, it appeared to be of so extraordinary a nature, that I certainly did not give entire credit to the wicked attempt that had been made to tamper with the jury, till I had used every possible means of ascertaining the fact.

The charge is founded upon the affidavit of most respectable persons, of whose veracity and honour there will not be the least question.—My lord, an attempt has been made to prejudice the trial of these prisoners, by conversations held with persons known to be jurymen, and by the most improper topics being addressed to the feelings and to the understandings of those men, to induce them to come into court, with a predetermined purpose of conviction.—My lords, I will state precisely what has been the nature of this conversation; and your lordships will be astonished to hear that the gentleman against whom I make this charge bears the character of a clergyman: but I shall prove it under his own hand. Fortunately for the prisoners, we are now in possession of the account he gave of the attempts he had been making to practise with those persons who he knew were summoned to constitute a part of the jury upon this solemn occasion. He writes thus—“I dined with three of the jurymen of the Blackburn hundred, who have been sum-

moned to Maidstone, to the trial of O'Connor and company: and it is not a little singular that not one yeoman of this district should have been summoned to an assize for this county, nor to any quarter sessions (excepting the Midsummer) for more than fifty years.—These three yeomen are wealthy yeomen, and partisans of the ‘High Court Party.’ Now this is as it ought to be; and as they are good farmers, and much in my interest—to be sure, I exerted all my eloquence to convince them, how absolutely necessary it is, at the present moment, for the security of the realm, that the felons should swing.—I represented to them that the acquittal of Hardy and company laid the foundation of the present conspiracy, the Manchester, London Corresponding, &c. &c. I urged them by all possible means in my power to hang them through mercy: a memento to others: that had the others have suffered, the deep laid conspiracy which is coming to light would have been necessarily crushed in its infancy.—These with many other arguments I pressed with a view that they should go into court avowedly determined in their verdict—no matter what the evidence.—An innocent man committed to gaol never offers a bribe to a turnkey to let him escape. O'Connor did this to my knowledge; and although the judge”—I beg pardon for stating here the foul imputations upon your lordship—“and although the judge is sufficiently stern, and seldom acquits, when hanging is necessary, the only fear I have is, that when the jury is impanelled, the ‘Blues’ may gain the ascendancy—in short, I pressed the matter so much upon their senses, that if any one of the three is chosen, I think something may be done.—These three men have gained their good fortunes by farming; and I think they are now thoroughly sensible that they would lose every shilling by acquitting these felons.”

The remainder of the letter I do not read, because it does not concern this subject.—This letter is in the hand-writing of the reverend Arthur Young; it was addressed to a gentleman at Bury, who has deposed to the receipt of it, and to its being in the hand-writing of Mr. Arthur Young.—We have given notice to Mr. Arthur Young of the application intended to be made to the Court; he acknowledged that he wrote the letter; and being called upon to state who the three persons were to whom he alludes, in order that we might be enabled to make it the subject of distinct challenge, he refused to name them. Under these circumstances, I am sure it will be the wish of your lordships, and I am confident it is of the prosecutors, to prevent these gentlemen being brought to their trial under the heavy weight of prejudices which may have been created in the mind of any one of the persons with whom this conversation has been held; what course your lordship will pursue it is not for me to state, it was my duty to put the Court in possession of

the circumstance, and I am sure I shall have the co-operation of every gentleman present, in endeavouring to discover, if possible, who the persons are with whom this conversation has been held, in order to prevent their constituting a part of the present jury; with how many more the same sort of conversation has been held I know not, but it is clear that this conversation has been held with three at least.

I believe that I ought to accompany this with an application to your lordships personally, against the individual who has unquestionably been guilty of a gross and high contempt of the Court.

Mr. Justice Heath.—He is not here.

Mr. Plumer.—We have given him notice.

Mr. Justice Heath.—But our commission is determinable before we can proceed to punishment.

Mr. Justice Buller.—Certainly it ought not to pass unpunished—will you have him called?

Mr. Plumer.—Yes, if your lordship pleases.

Mr. Justice Buller.—Call him by his name.

[The rev. Arthur Young was called, but did not appear.]

Mr. Plumer.—When the rev. Arthur Young was told of an application being to be made to the Court against him, he said he should consult Mr. Forbes, an attorney, a relation of his, as to what would be best for him to do.

Mr. Justice Heath.—It is a very great offence; what would you wish us to do upon it at present?

Mr. Plumer.—I am sure it is your lordship's wish, generally, to protect the purity of justice, and that these proceedings should go on in a way to attain that justice; there are summoned from the Blackburn hundred a number of freeholders to serve as jurors; I presume there will be no objection to a question being put from an officer under your lordship's direction, or from your lordship, to each of them as they are called, to know whether any one of them is a person, with whom this conversation has been held.

Mr. Justice Buller.—We may ask this question, Have you been in company with Mr. Arthur Young? but we cannot ask a jurymen any question that tends to criminate himself.

Mr. Plumer.—I am perfectly aware of that.

Mr. Justice Buller.—What part these jurymen took we know not; they may be pure and guiltless; this clergyman ought to be punished, and very heavily.

Mr. Justice Heath.—As I understand the letter, he says he thought he made an impression upon them; there is no imputation upon them, for a man may listen to another, and not pay any attention to what he says.

Mr. Dallas.—I certainly do not think it necessary to add much to my friend Mr. Plumer's observations, because it seems sufficient for me that the Court is put in possession of the

fact; I have no doubt that every thing will be done to counteract a plot of so base and of so infamous a nature, and to guard the purity of the administration of justice; I rise, therefore, for the purpose merely of making one observation upon what fell from one of the learned judges: it is truly said, that upon the affidavit which has been stated to the Court, it does not appear that these jurymen assented to the arguments that were urged to induce them to convict, whatever the evidence might be; but the question is, whether your lordships will put these prisoners upon their trials without that fact appearing one way or the other, after your lordships have been put in possession of evidence, from which it does appear, that attempts of this sort have been made. A great variety of cases have occurred, in which trials have been put off on account of the circulation of pamphlets, written with a view to an impending trial.* I am not aware that, in any one of those cases, evidence has been laid before the Court, that those pamphlets did produce the effect intended; it was enough that they might produce the effect, and therefore I take for granted, that if this had been done with respect to all the jury, whether it had appeared or had not appeared that it had produced any effect, the Court would upon that ground generally have put off the trial altogether; then the question is, whether, when it does appear with respect to some of this jury, your lordship will not institute that inquiry before they are sworn, which is necessary for the purpose of justice; it does not seem to me essential to such an application to prove, that in point of effect the endeavour did succeed; it is enough that the endeavour has been made.

Mr. Attorney General.—I am perfectly persuaded, that I do not take to myself a degree of credit for feelings that are not genuine, when I protest, in the name of the country, that I hear, with great affliction, that any such circumstance has taken place, as that which has been mentioned this day in the court; and I have no difficulty in stating, that if, upon an inquiry into the truth of this matter, conducted upon principles of justice, with respect to all the parties concerned in it, I should find reason finally to think, that the charge made by this affidavit is true; I have no difficulty in stating here, that I think it my bounden duty to those persons who stand at the bar, that I think it my bounden duty to the country, and that I ought to be dismissed with disgrace from my office instantly, if I hesitated one moment to exercise the utmost powers that my office confers upon me, to bring to justice any man who dares to hold this sort of language to a person who is to execute the office of a juror in this country.

I perfectly agree, that the law knows no more of the character of a juror than this,

* See the case of the dean of St. Asaph, ante, vol. 21, pp. 848, et seq.

that the sheriff of the county is to bring into that box, to try indifferently between the country and these prisoners, twelve men, qualified according to law to try them, without a prejudice upon their minds, and, if possible, without the least information with respect to the matter which they are to try, till they hear it openly in this court. If, therefore, the object of this application be, in the first place, the punishment of any man who has been guilty of any such practice, I have no difficulty in stating here, that I pledge myself to use my utmost endeavours to bring to justice any man who can be justly so accused.— If the object be, on the other hand, to prevent these three unknown persons from forming a part of this jury, I say also, that although I think, in forwarding an application for justice, I ought to take great care that I do not injustice; therefore, in stating what I now state, I desire it may be distinctly understood, that I do not concur in any censure upon any of those three persons, founded upon any thing that has as yet appeared; yet, my lord, I know this, that we live in a country whose government and constitution is not worth supporting, if it be possible that any trial of men for their lives can be conducted with the concurrence of those to whom is intrusted the administration of justice, under circumstances that shall leave upon the mind of any honest man a doubt, whether the prisoners tried for their lives, have been justly tried or not; and therefore, any means which can be adopted, consistently with the rules of justice, to know who these three persons are, I shall certainly think it my duty, again protesting against its being considered as any censure upon them, so far to concur with my learned friends in what they have been stating, as to relieve the prisoners from the necessity of challenging these persons by challenging them myself, in order that they may not form a part of the jury. Farther than this, I know not how I can concur and co-operate; but to the extent to which I have expressed myself, I pledge myself to the country that I will, to the best of my judgment, execute it.

Mr. Justice *Buller*.—That is all that can be done.

Mr. *Plumer*.—All that can be done is, to adopt some means to ascertain who the persons are.

Mr. Justice *Heath*.—How many persons are there from that hundred?

Mr. *Attorney General*.—I find, upon inquiry, that the number of the freeholders summoned from Blackburn hundred is twelve; it seems to me, that it is the most proper way of stating myself, with respect to the jurors of that hundred, because the least reflecting upon any of them, and at the same time what perhaps will be the most fair towards the prisoners to say, that I give up all these twelve.

“*Kent to wit*.—The king against James O'Coigly otherwise called James Quigley

otherwise called James John Fivey, Arthur O'Connor, esq. John Binns, John Allen, and Jeremiah Leary, on a charge of high treason.

“*Gamaliel Lloyd*, of Bury St Edmund's, in the county of Suffolk, esq. maketh oath and saith, that he this deponent did, on or about the 3rd day of May instant, receive the letter hereunto annexed from Arthur Young, of Bradfield, in the county of Suffolk, clerk, and that he hath frequently received letters, and corresponded with the said Arthur Young, and that he verily believes that the said letter is written by, and in the proper hand-writing of, the said Arthur Young; and this deponent farther saith, that he saw and conversed with the said Arthur Young on the 19th day of May instant; after this deponent had been served with a writ of subpoena requiring his attendance at Maidstone, in the county of Kent, on the 21st day of May instant, with the said annexed letter, upon which occasion this deponent informed the said Arthur Young that he was so subpoenaed for the purpose aforesaid, and urged the said Arthur Young to come to Maidstone aforesaid, and meet the charge and extenuate his fault in the best way he was able, concerning which he hesitated, but he seemed disposed to come if there was a place in the coach for him. And this deponent farther saith, that the mother of the said Arthur Young being present on the said last-mentioned occasion, also urged the said Arthur Young to inform her of the names of the jurors mentioned in the said letter, to whom he had spoken, as stated in the said letter, but he refused to comply with her said request, whereupon this deponent advised the said Arthur Young to consult Mr. Forbes, an attorney, and a relation of his, as to what would be best for him to do, and to act accordingly, to which he the said Arthur Young seemed to this deponent to assent.

“*GAMALIEL LLOYD.*”

“Sworn in court at Maidstone, in the county of Kent, 21 May, 1798, before F. BULLER.”

“Dear Sir;—I dined yesterday with three of the jurymen of the Blackburn hundred, who have been summoned to Maidstone to the trial of O'Connor and Co.; and it is not a little singular, that not one yeoman of this district should have been summoned to an assize for this county, nor to any of the quarter sessions (excepting the Midsummer) for more than 50 years. These three men are wealthy yeomen, and partizans of the ‘High Court party.’ Now this is as it ought to be, and as they are good farmers and much in my interest, to be sure I exerted all my eloquence to convince them how absolutely necessary it is, at the present moment, for the security of the realm, that the felons should swing. I represented to them, that the acquittal of Hardy and Co. laid the foundation of the present conspiracy, the Manchester, London Corresponding, &c. &c. I urged them, by all

possible means in my power, to hang them through mercy, a memento to others; that had the others have suffered, the deep laid conspiracy which is coming to light would have been necessarily crushed in its infancy. These, with many other arguments, I pressed, with a view that they should go into court avowedly determined in their verdict, no matter what the evidence. An innocent man committed to gaol never offers a bribe to a turnkey to let him escape, O'Connor did this to my knowledge. And although the judge is sufficiently stern, and seldom acquits when hanging is necessary, the only fear I have is, that when the jury is impanelled, the 'Blues' may gain the ascendancy. In short, I pressed the matter so much upon their senses, that if any one of the three is chosen, I think something may be done. These three men have gained their good fortunes by farming, and I think they are now thoroughly sensible that they would loose every shilling by acquitting these felons.

"I have seen, sir, that detested shore, that atrocious land of despotism, from Shakspear's cliffs, Calais steeples, and truly I shuddered, not at the precipice, but by contemplating the vicinity to me of a miscreant crew of hellions vomiting their impotent vengeance, and already satiating their bloody appetites upon my country. Ah! my good sir, we are safe, it is next to a moral impossibility that in Sussex or Kent they could land in force; the batteries, forts, &c. are so numerous, that hardly a gun-boat could escape being blown to atoms. But Ireland, alas! alas! it is lost, sir, I fear it is gone.

"Here government are now spending hundreds of thousands in fortifying what can never be attacked; they are fortifying the castle with out-works, ravelins, counterscarps, and immense ditches, and they are absolutely burrowing under the rocks for barracks; it is, indeed, a most prodigious undertaking, but absolutely useless. It is a pity, indeed it is, when money is so much wanted, to see it so wantonly wasted, and all done in *throwing down the cliff upon the beach*. Remember me to Mrs. L. and your family, assure her we all expect a republican visitation.

"This county is split into party, but I never enter the habitation of a yeoman but I see the sword of its owner suspended; glorious sight! But the militia, O Lord! at Morsham, Shoreham, Ashford, Battle, Lewes, Brighton, Ringmer, &c. &c. I very seldom meet with a sober man, 'tis nothing but a dreary sight of drunkenness. Fine soldiers in action! their pay, their pay so extravagant.

"I have now as fine a sight of the Chalk-hill opposite as ever was seen. The sun is setting upon that vile land, and presents an object not a little disagreeable.—Your's, truly,
"Dover, May-day. A. Youke."

Addressed, "Gamaliel Lloyd, Esq.
Bury St. Edmund's, Suffolk."

Mr. Garrow.—I will take this opportunity to state that the witnesses may now retire.

Mr. Plumer.—We have no objection to it, but we have no wish that they should retire on either side.

Mr. Attorney General.—I wish it to be understood that I desire it.

Mr. Plumer.—There are some gentlemen in court who will speak only to character.

Mr. Attorney General.—It is impossible for me to pledge myself that I may not have some very material questions to ask of every witness that may be brought. Your lordship will give me leave to ask the counsel for the prisoners whether they mean to sever their challenges?

Mr. Plumer.—I believe I am authorized by all the prisoners to say, that it is not their intention to separate their challenges.

Mr. Attorney General.—In consequence of what the counsel for the prisoners have now said, I am to desire that the trial of all the prisoners may come on together.

[The jurors returned by the sheriff were then called over.]

Edward Burrow, esq. challenged by the prisoners.

Thomas Newnham, esq. challenged by the crown.

William Wells, esq. challenged by the prisoners.

John Harrison, esq. not a freeholder.

Thomas Raikes, esq.

Mr. Plumer.—I challenge Mr. Raikes for cause.

Mr. John Foulkes sworn.

Mr. Plumer.—Did you see Mr. Raikes at the time of the arraignment of the prisoners? —Yes.

Did you hear him say any thing respecting the prisoners at that time?—He stood pretty nearly in the place where I now stand (near the bar), and he inquired the names of the prisoners separately; the last of the prisoners happened to be Mr. Binns, whom I pointed out, he looked them all steadfastly in the face quite close to them, clenched his fist, and exclaimed, "damned rascals."

Mr. Attorney General.—That is evidence that may be given by any body, that is no cause of challenge.

Mr. Plumer.—There can be no doubt, if this fact is believed, it proves that Mr. Raikes does not come here with that indifferent mind which every person who sits upon the life of another ought to have; epithets of that nature, when applied to persons who were in a situation to be tried for their lives, are strongly expressive of such a disposition, and a person who could use them must entertain some hatred.

Mr. Attorney General.—We are getting here into prodigious irregularity, and I feel it my duty to protect the gentlemen of the jury against this sort of attack. If my friend means to state any case of fact which he has

to propose to the Court, let him state that case, and let us have it tried by triers.

Mr. Dallas.—It is not only expressive of malice, but it furnishes a presumption that the juror has formed an opinion with respect to the particular case.

Mr. Attorney General.—I must interrupt this mode of proceeding.

Mr. Justice Buller.—Will you have it tried?

Mr. Dallas.—Yes, we will have it tried.

Mr. Justice Buller.—The cryer puts me in mind of what I did upon a former occasion, but perhaps this may not come within that rule: I appointed two officers of the Court then to try it. Are there two gentlemen here that are not upon the jury? Mr. Under-sheriff, point out two gentlemen who are not upon the jury.

[The under-sheriff pointed out Thomas Watkinson Paylor, esq. and Isaac Rutton, esq.]

They were sworn "to try whether Thomas Raikes, the juror, stands indifferent between our sovereign lord the king and the prisoners at the bar, and thereof a true verdict give according to the evidence."

Mr. Justice Buller.—Swear the witness again.

Mr. John Foulkes sworn.

Mr. Plumer.—I wish to ask Mr. Foulkes whether he saw Mr. Raikes at the time the prisoners were arraigned?—I did.

Did you hear Mr. Raikes, at that time, use any expression respecting any of the prisoners?—He inquired the names of the several prisoners; the last he inquired about was Mr. Binns, he asked that question of me; he looked them steadfastly and angrily in the face, he shook his fist, and exclaimed, "damned rascals."

Mr. John Foulkes cross-examined by Mr. Attorney General.

Did you know Mr. Raikes before?—Personally only.

Mr. Raikes is not an acquaintance of yours at all?—Not at all.

And you mean to say, that Mr. Raikes came to you, a stranger to him, and asked you that question, and held the conversation that you have now stated?—Unquestionably, and in the presence of others as well as myself.

Tell us who the others were?—They were all strangers to me.

Did you take any notice of it to any body else at the time?—I did, the moment I came out of court.

Whereabouts did Mr. Raikes stand?—Just where I stand now [just before the bar], or pretty near it, the present arrangement of the court may make some difference.

And, standing there, he asked you who were the prisoners?—He asked me relative

to Mr. Binns, having asked about the other prisoners of persons that were standing by at the time, I pointed out Mr. Binns to him.

He had asked of others with respect to the other prisoners?—He had.

Do you recollect who the persons were that he asked the questions of?—I cannot tell the names of those persons.

You know Mr. Raikes is a person in a very respectable situation of life?—Unquestionably.

And you can name no person but yourself that could give any evidence upon this, although you heard the same question put to others?—I did not, at the time, mention it to any body that was standing by me, but the moment I came out of court I mentioned it, to the best of my recollection, to Mr. Simmons.

What did Mr. Raikes say to the other persons to whom he addressed questions?—That I did not hear.

You are a perfect stranger to Mr. Raikes, except knowing him, as every body else does, by character?—His person is perfectly familiar to me; I had occasion to see Mr. Raikes not long ago.

Mr. Plumer.—Have you the least doubt about Mr. Raikes's person that this was the gentleman whom you saw?—I have no doubt in the least; I mentioned him by name to Mr. Simmons and Mr. Bonney, to the best of my recollection.

Were the words "damned rascals" expressed in a conversation particularly addressed to you, or an observation expressed to himself when the prisoners were pointed out to him?—It was not addressed to me, but to the prisoners, looking them steadfastly and angrily, and bitterly in the face, and clenching his fist at the time.

Then the conversation that was addressed to you, I understand to be only enquiring who the prisoners were, is it so?—Yes.

Enquiring which were the prisoners, and after having been told which they were, clenching his fist, and making the observation "damned rascals"?—He asked me only with regard to Mr. Binns.

Mr. Attorney General.—I will prove that he made application to be excused.

Mr. Plumer.—That may apply either way; if Mr. Raikes was conscious he could not try them indifferently, that might be a sufficient reason for his wishing to be excused.

Mr. Attorney General.—That is matter of observation.

Mr. Solicitor General sworn.

Mr. Solicitor General.—Mr. Raikes, when I have seen him at different times, has repeatedly expressed to me his extreme unwillingness to be upon the jury, and this morning, as I was coming into court, stated to me the extreme inconvenience that it would be to him to be upon the jury, and that he had made an application to your lordships with a view not to serve upon the trial.

Mr. Justice *Buller*.—Gentlemen, you will say, upon the evidence you have heard, whether you are of opinion that Mr. Raikes is a person who will try these prisoners indifferently, upon the evidence that may be given, or not,

[After consulting together, one of the gentlemen said, as the oath is taken against Mr. Raikes, we think he had better be omitted.]

John Cator, esq. challenged by the prisoners.
Henry Jackson, esq. challenged by the prisoners.

John Willis, gent. challenged by the crown.
Thomas Poole, gent. challenged by the crown.
Luke Pocock, esq. not properly described in the pannel.

John Nesbit, esq. challenged by the crown.
James Kirkpatrick, esq. challenged by the prisoners.

Charles Haskins, esq. sworn.

Richard Stone, esq. challenged by the prisoners.

Robert Jenner, esq. challenged by the prisoners.

John Davison, esq. not a freeholder to the value of 10 pounds a year.

Charles Stuart Minshaw, esq. challenged by the prisoners.

Stephen Brooker, farmer, challenged by the prisoners.

Sir Richard Glode, knight, not properly described in the panel.

James Biggs, farmer, challenged by the prisoners.

Henry Pawley, farmer, challenged by the prisoners.

David Orme, esq. challenged by the prisoners.

William Cope, esq. excused on account of age.

Richard Lewin, esq. challenged by the prisoners.

William Watkins, gent. challenged by the prisoners.

John Leader, esq. challenged by the prisoners.

Benjamin Harence, esq. excused on account of illness.

Richard Wright, esq. not properly described in the panel.

James Bedell, farmer, challenged by the crown.

Richard Chapman, esp. challenged by the prisoners.

Joseph Bearn, esq. challenged by the prisoners.

William Child, maltster, challenged by the prisoners.

Thomas Wilmot, gent. challenged by the prisoners.

George Brooker, farmer, challenged by the prisoners.

William Small, farmer, sworn.

William Wilmot, gent. challenged by the crown.

William Wedd, farmer, challenged by the prisoners.

James Hodsoll, gent. challenged by the prisoners.

James Martyr, gent.

Mr. *Plumer*.—We challenge Mr. Martyr for cause.

Mr. Justice *Buller*.—Swear the two jurors who are sworn to try this question.

[Mr. Haskins and Mr. Small were sworn as triers].

Benjamin Rawson sworn.—Examined by Mr. *Plumer*.

Do you know Mr. James Martyr?—Yes, I do.

Did you hear him say any thing respecting the prisoners, and what?—I heard him say that he was afraid the prisoners were guilty, and something more he said, I do not recollect what, but he ended it by saying—I hope they will be hanged if they are guilty.

Benjamin Rawson cross-examined by Mr. *Attorney General*

Where do you live?—With Mr. Austin, a farmer, at Shoreham.

What countryman are you?—I came out of Lancashire, I am a Liverpool man.

What are you doing at Mr. Austin's?—Learning the farming business.

Mr. *Plumer*.—Unless the other witness I shall call carries it farther, I shall wave my objection.

Mr. *Attorney General*.—Have you had any talk with any other juryman about these trials?—I have not.

You state that upon your oath?—I have not, of any consequence, I have not heard any other juryman give any opinion.

Have you upon your oath been to converse with any and what juryman upon this subject?—I believe I may have asked one of them a question.

Who was with you when you went to that other juryman?—This gentleman was once with me.

What is his name?—Austin.

Was any other person, any clergyman or minister, with you?—The person I asked was Mr. Wilmot, who is on the panel, I was at his house, where I went with this gentleman, and I asked him in the course of conversation what he thought of the prisoners, and he said he did not think anything about it.

Mr. *Plumer*.—Were you directed by the prisoners or any of their agents to do this?—I was not.

Mr. *Plumer*.—I do not know why the examination is pursued after I have declared that unless the other witness carries it farther, I shall not insist upon my objection.

Mr. *Attorney General*.—I will take care that justice shall be done both to the public and the prisoners, with respect to every individual that I can hear of, who has spoken upon the subject to any juryman improperly.

Mr. *Plumer*.—I have no objection to that,

I only wish to have it distinctly understood that this man was not sent to any one of the jurors by the prisoners, or any person employed by them.

Mr. Dallas.—We understand that the other witness will not carry it farther, therefore we waive our objection, and challenge him peremptorily.

William Everest, farmer, challenged by the crown.

Thomas Hogsflesh, farmer, challenged by the prisoners.

William Walter, gent. not properly described in the panel.

William Brooks, farmer, challenged by the prisoners.

Henry Dyson, gent. challenged by the crown.

Robert Brown, gent. challenged by the prisoners.

James Sale, farmer, not a freeholder.

Valentine Hakleston, gent. challenged by the crown.

John Rainch, esq. challenged by the prisoners.

William Maynard, farmer, excused on account of illness.

William Cronk, farmer, sworn.

Thomas Ralph, gent. challenged by the crown.

James Harbroe, esq. challenged by the crown.

Mr. Scott.—I must be chained down to the ground, my lords, before I can sit here, engaged as I am for the life of one of the gentlemen at the bar, and submit to these challenges of the crown without cause. My lords, I beg to read to you what chief justice Eyre said upon this subject in Mr. Tooke's case: "I feel that the circumstance, which is become absolutely necessary, of making the panels vastly more numerous than they were in ancient times, might give to the crown an improper advantage, arising out of that rule; and whenever we shall see that improper advantage attempted to be taken, it will be for the serious consideration of the Court, whether they will not put it into some course to prevent that advantage being taken."*

My lords, the crown has now challenged eleven jurors without cause. I believe this is a greater number than was ever known before; and upon the authority of chief justice Eyre, I submit that your lordships must feel yourselves called upon to interfere. But, my lords, if I had not been restrained by a reason too mighty for me to oppose, I should have resisted these challenges in the beginning. From that restraint I am now free; and I trust your lordships will not think me too presumptuous, when you recollect that, in lord Grey's case, at a time when the point was considered as much settled as it is pretended to be now, lord Holt, then a counsel

at the bar, did argue it, and argued it most strenuously;* and in Layer's case, Mr. Ketelby argued it still better, and put it in a new point of view.†

My lords, I feel this question to be of the last importance, not only to the lives of the gentlemen at the bar, but to the lives and characters of us all; and therefore I have taken some pains to inform myself upon the subject—and I undertake to show,

1st, That my opposition to the crown's challenging without assigning the cause of challenge, is grounded upon the most indisputable authority:

2ndly, That the pretended authorities upon which the counsel for the crown must rely to support their false doctrine, cannot possibly have the least weight with the Court:

3rdly, That, upon the general reasoning of the thing, and of the consequences which this doctrine must produce, a more monstrous violation of law and justice cannot be attempted.

My lords, as to my first proposition, I shall prove that very shortly, by only reading the 33rd Edw. 1st, stat. 4.—"An ordinance for inquests—He that challengeth a jury or juror for the king, shall show his cause."—"Of inquests to be taken before any of the justices, and wherein our lord the king is party, howsoever it be—It is agreed and ordained by the king, and all his council, that from henceforth, notwithstanding it be alleged by them that sue for the king, that the jurors of those inquests, or some of them, be not indifferent for the king, yet such inquests shall not remain untaken for that cause; but if they that sue for the king will challenge any of those jurors, they shall assign of their challenge a cause certain; and the truth of the same challenge shall be inquired of, according to the custom of the court; and let it be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true, or not, after the discretion of justices."

This is a positive statute; and if it has been pretended that the crown may challenge and not be called upon for cause, until the whole panel is gone through, I undertake to prove my second proposition, by showing that this is all mere pretence, and there is no authority in the law for such an usurpation; and, even if there were, the rule of law is, that, "in cases arising upon a statute, no established form of legal proceeding can control the statute, but must be corrected by it."

The first man who dared to breach this wicked doctrine in opposition to the statute, was Staunford, in his Pleas of the Crown (162, b), where he says, "By the statute of Edward 1st, the king cannot challenge without cause—But this cause he need not show immediately upon his challenge (as a common person must, if he were

* See Horne Tooke's case, *antè*, Vol. 25, p. 25.

* See lord Grey's case, *antè*, vol. 9, p. 122.

† See Layer's case, *antè*, vol. 16, p. 134.

party against the king), but he must show it when he has perused all the panel."—This he has thought proper to say without any authority, and without any reason to support it. It rests merely on Staunford's opinion, which is no authority. Indeed, there can be no authority to overturn the positive words of an act of parliament.

To this opinion of Staunford's, sir M. Hale and sir W. Blackstone both refer, as their only pretence for the doctrine (the 2nd volume of Hale's Pleas of the Crown, 271; and the 4th volume of Blackstone's Commentaries, 353). Mr. serjeant Hawkins* refers, indeed, to two cases; but when these cases are examined, they can have no weight with the Court.

The first is an anonymous case, in the 1st volume of Ventris, 309, which was an information of forgery. "The counsel for the king challenged, and were pressed to allege the cause; for 33 Edw. 1st, does take away the general challenge, *quia non sunt boni pro Rege*; but all the court (*save Wyldes, who seemed to be of another opinion*) ordered the panel to be first gone through; and if there were enough, the king is not to show any cause."—These were bold judges, my lords, to rule directly against an act of parliament.

The next is Ford lord Grey's case, in sir Thomas Raymond, 473.† "In a trial at bar, in an information against Ford lord Grey of Warke, and others, for taking away the lady Henrietta Berkeley, 20th Aug. 34 Car. II, the counsel for the king challenged some of the jurors who were returned out of the county of Surrey; and the counsel for the lord Grey insisted, that the cause of the challenge ought to be *presently* shown, according to the statute 33 Edw. 1st, called an Ordinance for Inquests; and to enforce them to do so, the counsel for the lord Grey challenged *tous par-avail*; but resolved by the whole court, that the king ought, by that statute, to show cause of his challenge, but not before all the jurors of the panel are called over; for, if there be enough besides those which are challenged, *no cause shall be shown of that challenge*; and therefore the defendants relinquished their challenge, and the jurors find the defendants guilty.—Of this opinion is Staunford, Pl. Coron. 163, b." So here is Mr. Staunford brought in again, to justify a direct violation of the law.

These are the two first cases, I apprehend, that are to be found in the books that the counsel of the crown can cite in support of their doctrine; and these cases ought to have no weight with the Court against a positive statute, even if they were less objectionable than they are; but when attentively considered, they can have no weight at all.

Lord Coke thought that the opinions of judges depend much upon their characters, and pre-

cedents on the times at which they are made. The judges who made the first precedent were, Rainsford, Twisden, Wyldes and Jones; and Wyldes opposed it.—It was in Easter term, 29 Car. 2, 1676 (*the latter end of Charles the Second's reign*). The judges who made the other were, sir Francis Pemberton, sir Tho. Jones, sir Wm. Dolben, and sir Tho. Raymond. The time was 34 Car. II, Michaelmas term 1682, when Pemberton sat as chief justice, in the short interval between the infamous Scroggs and the still more detestable Jefferies, and when the judges, my lords, were accused by parliament, in the words of a great lawyer, "instead of acting by law, of being actuated by their ambition, and of endeavouring to get promotion rather by worshipping the rising sun than by doing justice." And sir Thomas Jones one of the very judges who made both these precedents, was included in the articles of impeachment against Scroggs, "for having," (in the words of those articles) "traitorously and wickedly endeavoured to subvert the fundamental laws of England." The 7th volume of the State Trials, 479.*

Sir Thomas Jones presided at the trial of Mr. Cornish, and sir Francis Pemberton at the trial of lord Russell; and both these trials were stigmatised at the Revolution, and the judgments reversed, by a solemn act of the legislature, because they had been obtained, in the words of the legislature, "by partial and unjust constructions of law." The 8th volume of the State Trials, 471.†

If this is not enough to damn these precedents, I have still more. This very sir Francis Pemberton has held two opinions upon this subject: for in count Coningsmark's trial for the murder of Mr. Thynn, who was a patriot, State Trials, 8th volume, 465,‡ sir F. Winnington challenged a juror for the king; and C. J. Pemberton himself said, "For what cause?"—Sir F. Winnington. "My lord, we take it that we need not show any cause, unless there be any want of number in the panel."—Lord Chief Justice. "Then we must do him right, and tell him what advantage the law gives him. Tell my lord, you that understand English, that this gentleman is challenged for the king; and if the king show any good cause for it, he must not be sworn; else he must—and the way for him to cause the king's counsel to show their cause (if he desire it) is to challenge all the rest."—Now, how does this agree with the doctrine of this same chief justice Pemberton, in the case reported by sir Thomas Raymond?

Behold, then, my lords, into what scrapes judges get when they attempt to set up a practice against the law. The act does not say a word about challenging all the rest;

* See the case in this Collection, vol. 8, pp. 174, et seq.

† Ante, vol. 9, p. 696, and vol. 11, p. 454.

‡ Vol. 9, p. 12, of this Collection.

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* 2 P. C. 580.

† Also reported in this Collection, vol. 9, p. 127.

and here is C. J. Pemberton, in count Corningsmark's case, setting up this doctrine of challenging *tous per avoile*, which means, as I understand it, from lord Coke's definition (in 2nd Institutes, 296) where he says, "Tenant of the land is tenant *per avoile*, because it is presumed that he hath *avoile* and profit by the land," that when the crown challenges, the subject shall have the *avoile* and profit of challenging all the rest in order to make the king's counsel show their cause; and then, in this case of lord Grey's, sir F. Pemberton contradicts his own former opinion. But the act says, that "the cause certain shall be assigned, and that the truth of the same challenge shall be inquired of, according to the custom of the court." Now, what was the custom of the court when this act was made? Certainly to show cause at the time the challenge was made.—Therefore unless the power of the judges is greater than the power of the legislature, all the judges that ever lived have no authority to shake this act of parliament.

From this I conclude, that precedents upon such subjects, made by such judges, in such times, and with such jarring opinions, cannot possibly have the least weight with the Court.—And then the doctrine stands upon the opinion of Staunford alone; and that Staunford is not infallible, I quote what lord Coke said of him upon another subject, in the debates relating to the liberty of the subject. State Trials, 7th vol. 150, "Staunford, at the first, was my guide; but my guide had deceived me—therefore I swerved from it: I have now better guides—acts of parliament, and other precedents—these are now my guides."

So here, my lords, I contend, we have a better guide than Staunford; we have the 33d Edw. 1st, which positively says, "that they who challenge for the king, shall assign of their challenge a cause certain," without saying a syllable about the whole panel being first perused. And lord Coke, whose book is justly considered of the highest authority in the law, and between whom and Staunford there can be no comparison, wrote some time after Staunford; and if this doctrine had been at all recognised, is it possible that this great luminary of the law should not have mentioned it? and particularly as he felt strongly the importance of this subject; for, before he begins to treat of challenge, he says (in Coke Littleton, 156, a.), "Forasmuch as men's lives, fames, lands, and goods, are to be tried by jurors, it is most necessary that they be *omni exceptione majores*; and therefore I will handle this matter the more largely." Therefore, if such a doctrine as this of Staunford's had prevailed, he certainly would have touched upon it; whereas neither here nor in any other part of his book, does he say any thing like it, but quite the contrary; for he says (in Coke Littleton, 156, b.), "Note, that at the common law, before the statute of 33 Edw. 1st, the king might have challenged pe-

remptorily without showing cause, but only that they were not good for the king, and without being limited to any number. But this was mischievous to the subject, tending to infinite delays and danger; and therefore it is enacted, Quod de cætero, licet per ipsos qui pro Domino Rege sequuntur dicatur, quod juratores inquisitionum illarum, sed aliqui illorum, non sunt boni pro Rege, non propter hoc remaneant inquisitiones illæ capiendæ; sed si illi qui sequuntur pro Rege aliquos juratorum illorum calumniati fuerint" (*Calumniati*) "assignent certam causam calumnie sue;" again, my lords, *Calumnie*—"whereby," says lord Coke, "the king is now restrained." So that lord Coke says nothing about the panel being first gone through; and if I know any thing of that great man's character as a lawyer, rather than have put his hand to such a doctrine as that, he would have thrust it into the fire. I think this completely gets rid of Staunford's authority, and then this doctrine has not a leg to stand upon; and it will be curious to see what crutches the learned attorney will use upon this occasion.

And now I come to my last proposition; and to show how much some great lawyers, at the time of the glorious Revolution, and since, have reprobated this doctrine: I shall first quote a passage from sir John Hawles's remark upon Fitz-Harris's trial, in the 4th volume of the State Trials, 169.* After mentioning the shameful tricks that were practised in colonel Sidney's trial, and some others, he says, "Another art used was, to challenge for the king without cause, where no cause could be shown, such jurors as they did not like." This is what sir John Hawles tells us, and I shall make great use of it presently.

In Laver's case, there is an irrefragable argument against the doctrine, and which shows the fatal consequences of it in a most glaring light.—Laver's case; the 6th volume of the State Trials, 247. †—Mr. Attorney General: "I challenge him for the king."—Mr. Ketelby: "Mr. Attorney is pleased to challenge him for the king; we humbly insist on it, that Mr. Attorney is to show his cause of challenge immediately. I own it has been otherwise in one or two late instances; but I submit it, if that practice should prevail, whether the act of parliament made on that occasion would not be in effect thereby abrogated. The act is the 33d Edw. 1st, and the words of it are, 'If they that sue for the king will challenge any juror, they shall assign of their challenge a cause certain, and the truth of the same shall be inquired of, according to the custom of the Court.' Now, my lord, I beg leave to observe, upon this panel there are one hundred and odd persons; if Mr. Attorney is not obliged to show his

* Vol. 8, p. 436 of this Collection.

† Vol. 16, p. 134 of this Collection.

use of challenge, when he challenges for the king, till all the panel is gone through, his act of parliament will be of no validity whatsoever. If there had been but a few returned (twenty-four, or such a number), then there might have been some colour for going through the panel before there was any cause assigned for the challenge; but since this modern practice has obtained to make so numerous a panel, if they are not obliged to show cause till the panel is gone through, that law is entirely a dead letter, and of no significance."—*Lord Chief Justice.*

You know your objection is of no validity; you cite an act of parliament, and you know he constant practice is against you."

Good God! what an answer! The act of parliament is admitted! but the practice is set up against it! How contrary is this to every principle of law and reason! Remember, my lords, the strong figure of lord Hobart quoted by Twisden in *Maleverer and Redhaw*, in 1 *Modern*, 35, and again by chief justice Wilmot, in *Collins and Blount*, in *Wilson*, 351:—"The statute is like a tyrant; where he comes, he makes all void."—And the same principle is laid down, rather in a cooler manner, by chief justice Vaughan in *Shepherd and Gosnell*, in *Vaughan's Reports*, 169, 170, and agreed to by chief justice Parker, in the *Attorney-general v. J. Chittrey*, seq. in *Parker's Reports*, 44, and sanctioned and relied upon in the *King v. Hog*, in 1 *Term Reports*, 728, viz. "If the usage have been to construe the words of a statute contrary to their obvious meaning, such usage is not to be regarded; it being rather an oppression of those concerned, than a construction of the statute."

My lords, in this case there are above two hundred upon the panel. I ask, then, that the figurative expression of lord Hobart, exemplified by this rule, may be applied to the present case; and I think the 33rd of Edw. 1st will no longer remain "a dead letter and of no significance."

Now, to show that the king's counsel have gone the whole length of setting defiance to the 33rd of Edw. 1st, I will cite Mr. Cowper's trial; and to show the shameful of the practice, and that the king's counsel have actually challenged under pretence of cause, when in fact they had none, I will cite the trial of Mr. Horne Tooke.

In Mr. Cowper's trial, in the 5th volume of the *State Trials*, 195,* the panel being gone through before there was a full jury, Mr. Cowper said, "if your lordship please, the panel is now gone through, I desire they may show some legal cause for their challenges."

—Mr. Jones (counsel for the king): "I conceive we that are retained for the king are not bound to show any cause, or the cause is sufficient if we say they are not good for the king; and that is allowed to be a good cause

of challenge, for what other cause can we show in this case? You are not to show your cause, you challenge peremptorily; so in this case the king does."—Mr. Baron *Hatsell*: "As for this matter of challenge Mr. Jones, I think you should show your cause of challenge, though the law allows the prisoner liberty to challenge twenty peremptorily."—Mr. Jones: "I don't know, in all my practice of this nature, that it was ever put upon the king to show cause."—Then Mr. Cowper, trusting to the goodness of his cause, did not insist upon it; otherwise Mr. Baron *Hatsell*, from what he said, would certainly have called upon Mr. Jones for his cause.

But Mr. Horne Tooke's case is much stronger; for there that wonderful man, who in the midst of his other vast attainments, still lives, my lords, the firm, undaunted, and unrivalled friend and advocate of the old law and liberty of England, said this:—"I do not mean to argue with your lordship and the counsel; but I find myself compelled to tell your lordship that I should, if I had not been over-ruled by the superior judgment of my counsel, have contended very early against the challenges of the crown."

Mr. Justice *Buller*.—Are not you aware you are very irregular in stating what parties say? In every case that you have quoted you cannot help seeing a decision against you.

Mr. Scott.—I began by stating, that I humbly apprehended it is impossible that any Court can rule against an act of parliament.

Mr. Justice *Buller*.—What I am saying is this, that you are acting extremely irregularly when stating what either the parties in the case or the counsel said.

Mr. Scott.—My lord, I certainly do not mean to do any thing irregular; I do not state it as any authority to your lordship, farther than the reasoning it contains; I am showing your lordship, that in this case of Mr. Tooke's, the attorney-general, under the pretence of having challenged for the king for cause, actually challenged without any cause at all. If your lordship has any objection to my stating Mr. Horne Tooke's argument, I will forbear.

Mr. Justice *Buller*.—Certainly, any thing determined by the Court you may state.

Mr. Scott.—Then I only state, that Mr. Horne Tooke's case was this: The panel was out, and there were only nine upon the jury, and then Mr. Horne Tooke insisted upon it, under the letter of the act, that the counsel must show their cause for challenge. There were three gentlemen who were challenged; the king's counsel showed no cause; and the learned attorney-general said, if your lordship will allow me to read his words—

Mr. Justice *Buller*.—No; state what the Court said.

Mr. Scott.—The attorney-general admitted he had no cause.

* Vol. 13, p. 1108, of this Collection.

* *Ante*, vol. 25, p. 23.

Mr. Justice Buller.—What did the Court do?

Mr. Scott.—The Court took the three men that had been challenged by the attorney-general. Thus, my lord, the attorney-general, trusting to the large number of individuals upon the panel, challenges these three honest men, under a pretence of having cause against them; and when, by an unexpected circumstance, he is driven to show his cause, he is compelled fairly to confess that he has none, and to see those very men that he had challenged for cause "*calumniati*," sit upon the trial.—Here, then, is a pretended practice, unsupported by the least authority, and directly in the teeth of a positive statute. It is as contrary to justice and reason as it is to law; because those gentlemen who are thus held up to the world by the attorney-general as men of such infamous characters that he can prove them in a court of justice to be unworthy of being trusted upon their oaths in a cause between the king and a subject, have no remedy, as I believe, and no opportunity of vindicating their reputation. The words *calumniati* and *calumnie* are fixed by the statute upon those whom the attorney-general challenges; and it would be much better that the king should challenge peremptorily, because then only the lives of the defendants would be in danger; but, now, not only the lives of the prisoners are in danger, but the reputation of every man that is liable to be called upon a jury is at the mercy of the attorney-general.

Why such an outrageous violation of law and justice should be permitted, I call upon the attorney-general to show some good reason; and if he cannot, then I call upon the Court, not merely for a decision, which is easily made, but for some reason to satisfy the minds of those gentlemen at the bar whose lives, fortunes and reputations, are now at stake, and to satisfy also the minds of those gentlemen of the county of Kent who go out to their neighbours thus grossly *calumniated*; or else to decide, as judges by their oaths are bound to decide, that an act of parliament which says, "That if they that sue for the king will challenge any of the jurors, they shall assign of their challenge a cause certain," is the law of the land; and that it is not in their power, nor in the power of all the judges that ever lived, to add words to a statute which are not to be found in that statute; and that, therefore, the attorney-general, who has now challenged one of the jurors, *shall assign of his challenge cause certain*.

Mr. Fergusson.—I shall not detain your lordship one moment, but I feel it necessary that I should rise in support of this objection. I certainly was of opinion that this objection ought to have been taken in the outset of this cause. I was, however, over-ruled, as I ever will be, by those persons whose experience is greater than mine. When I found that the gentlemen who lead this cause, were against taking this objection, I wished to dissuade my

friend from bringing it forward; but since he has brought it forward, since the question has been agitated, I find it a duty, which I cannot refuse to my own character, as well as to the cause in which I am engaged, to support the objection, and to state that my opinion firmly is, that the crown can have no right to challenge without a cause. I shall not go into the law upon this subject, because my friend has done it so largely and so ably that I cannot possibly add any thing to what he has said. I shall only observe to your lordship, with respect to the practice, that at the time when, according to the ancient and usual mode of proceeding in summoning jurors, the panel was confined to the number of forty-eight, which I believe in no instance anciently was infringed, it was then impossible——

Mr. Justice Buller.—Do you mean there has ever been so small a panel as forty-eight since the Revolution?

Mr. Fergusson.—I meant previously to that time, certainly: formerly forty-eight only were summoned, and then the prisoners could receive no material injury from the crown refusing to assign their cause till the panel was gone through, because in that case there was but one upon the panel whom the crown could challenge, without showing cause, if the prisoner adopted the advice given by the Court to count Coningsmark to challenge the rest of the panel, but it is in the power of a bad judge—I know that such a thing cannot occur in the present case—but it is in the power of a bad judge to summon such a panel, that it is impossible the prisoners can ever go into the cause that the attorney-general has for challenging. I submit, that according to the present practice in summoning so large a panel, it is impossible the prisoners can have justice.

Mr. Justice Buller.—Whether the reasons which I shall assign for the opinion which I hold, may be satisfactory to the county of Kent, or any other description of men, I am sure is much more than I can take upon myself to say; but such as my reasons are, I undoubtedly shall not hesitate to pronounce them upon this and upon all other occasions, taking the chance what may be the effect either of popular declamation, or any other reflexion that may be thrown upon them. And I have no difficulty in saying, that I am most clearly of opinion the law is as firmly and as fully settled on this point, as any one question that can arise on the law of England. I will go farther, and say, that every case which has been quoted against the conduct of the attorney-general in this instance, is a direct proof in favour of the power which he has exercised. I will also add, that the statute itself is not against it.

First, let us see what the words of the statute are, that the "inquest shall not remain untaken." Every decision has proceeded upon that ground; every case that has been decided upon the question, shows how it shall not

remain untaken. The panel is to be gone through, and when it is gone through, in order that the inquest shall not remain untaken, the attorney-general is called upon to show his cause; and if he does not show cause then, as Mr. Scott has said, the jurymen must be called, and must be sworn, notwithstanding he has challenged them; and therefore, in the words of the statute, the inquest does not remain untaken.

Staunford, it is agreed, is of this opinion; but not only Staunford takes this as a clear point: lord Hale and Mr. Justice Blackstone both state the same thing. It is said, however, they have done it upon the authority of Staunford, and therefore that that can go no higher than its source.

The case of Laver that is stated, is a direct authority against it. The objection was taken by Mr. Ketelby, and when Mr. Scott states the argument of counsel upon us, he does not treat the Court respectfully. The material thing is, to look to what the chief justice says. He says, "You know your objection is of no validity; you cite an act of parliament, and you know the constant practice is against you."

I have no doubt that it was not intentional, but Mr. Scott misrepresented the passage I stated: he exclaimed very much upon the expression of lord chief justice Pratt in the case of Laver; he commented upon it as if the words "practice against you" had been against the act, whereas the meaning of the chief justice was, that the practice was against the objection, and so it has been in all the cases.

Now, in Cowper's case, it is still stronger; for there the panel was gone through. Neither Cowper himself, nor any body else, thought of making an objection till the panel was gone through, and after that he says, "If your lordship please the panel is now gone through; I desire they may show some legal cause for their challenges." Therefore it is clear that the counsel for the crown were not called upon to show cause till the panel was gone through.

In Mr. Horne Tooke's case the panel was gone through before an objection was made by any body; and it ought never to be supposed by any man whatever, that a challenge imports a reflexion upon a juror. What shall we say to all the challenges that have been made by the prisoners? Do they reflect an imputation or indignity upon the persons challenged? Not at all; they have a right by law to do it, and therefore it can throw no reflexion upon any person whatever.

With respect to the observation that Mr. Fergusson made, I think he did not quite consider in what manner the Court proceeds in criminal cases. The judge has nothing more to do with summoning the jury than to award the rule, and he knows no more of the jury when he comes to try the cause than a child; the Court issues its precept to the sheriff, and the jury which comes here is selected and summoned by the sheriff—

Mr. Fergusson.—I meant that the judge directs the number of jurors of which the panel shall consist.

Mr. Justice Butler.—That is another thing. Now, here are some things more to be considered, which are what have happened in our own time.

It was not said by the chief justice in Mr. Horne Tooke's case, that the attorney-general was or could be controlled by the Court in his number of challenges. In the trial which, through infirmity, was the only one I attended, which was Hardy's,* the challenges were made by the attorney-general without the smallest objection on any part whatever.

There are some other cases that have fallen within my notice. In the case of lord George Gordon,† no objection was taken by any body; the attorney-general challenged just as many as he thought fit. In *De La Motte's* case,‡ whom I also tried, nobody thought of it; and there is not only a constant modern practice, but a practice as ancient as the statute itself, to prove that the true construction of the statute is what I have mentioned; and there is no case, no period, in which a different determination has been made. It appears to me one of the clearest points that can be.

Mr. Justice Heath.—The statute is clear as connected with the custom. The words of the statute are, the "inquest shall not remain untaken for that cause," (that is, for the challenge of the king) "but if they that sue for the king, will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of, according to the custom of the Court." What has been the custom of the Court? It has been, that it should be inquired into after all the panel is gone through; so all the cases that have been cited, and all the authorities that have been cited, have proved the reverse of the proposition for which they have been produced. With regard to the circumstance of having more jurors now than in former times, that is for the benefit of the prisoner, to give him a speedier trial.

Mr. Justice Lawrence.—The question upon this occasion is, what is the true construction of the statute? and we have been referred to the authority of lord Coke. Lord Coke, in his comment upon *Magna Charta*, lays down that the best expositions upon that and all other statutes, are our books, and use and experience. Now, what has been the construction of this statute by our books, and by use and experience? We find in one of our oldest writers upon crown law, that he states the construction of the statute has been that which is contended for now on behalf of the crown, that the panel shall be gone through

* *Antt*, vol. 24, p. 199.

† In this Collection, vol. 21, p. 485.

‡ In this Collection, vol. 21, p. 687.

before the crown shall be put to assign cause for its challenges. Such has been the construction of it by lord Hale, one of the ablest writers upon the crown law, and one of the most worthy and amiable of men, upon whom no reflexion can be cast, whatever may be upon other men.

It has been said this practice commenced in bad times, when judges looked to the rising sun. Was lord Holt such a man? Look at the case of lord Preston. The counsel for the king challenged a juror, and lord Preston desired that cause might be shown. Lord Holt said, "cause is not to be shown by the king's counsel till all the panel be gone through; and then if there be not twelve left to try, then they are bound to show cause; that is the law."* And lord Holt was so clear that was the law, that he told lord Preston he would not have the time of the Court spent by assigning counsel to argue it. That was the conduct of lord Holt; and I take it that no man, let him be ever so fond of liberty, or attached to the law and constitution of the country, can set himself up as a person more attached than he was.

It has been said that the practice was, before the revolution, to have but forty-eight jurors. That is a mistake. In sir Henry Vane's† case sixty jurors were returned. Since the revolution a hundred were returned in the case of Layer.‡ In the case of Char-nock § and others, tried before lord Holt, who, I suppose, directed the proper number of jurors (and he was not likely to direct an improper number), one hundred and sixty were returned; and in the case of Mr. Townley,|| an hundred and eight. The constant uniform practice is against this objection. It seems to me, therefore, that there is no ground whatever for it, and that the attorney-general ought not to be put to assign the cause of challenge till the panel is gone through, and then that the inquest may not remain un-taken, he must assign the cause of his challenge.

Richard Ray, farmer, sworn.

William Rapson, esq. not properly described in the panel.

James Chapple, distiller, sworn.

William Roots, farmer, challenged by the prisoners.

William Tyler, gent., not properly described in the panel.

John Shaw, gent., challenged by the prisoners.

John Tyler, gent., challenged by the prisoners.

James Alexander, timber-merchant, challenged by the prisoners.

Edward Worger, farmer, not a freeholder.

Edward Whitaker, farmer, challenged by the crown.

Benjamin Fletcher, farmer, not a freeholder to the value of 10*l.* a year.

Richard Green, farmer, excused on account of illness.

Henry Streatfield, esq. excused on account of illness.

William Marchant, sen. farmer, challenged by the crown.

William Haynes, farmer, challenged by the crown.

Henry Woodhams, farmer, challenged by the prisoners.

Richard Allnutt, esq. challenged by the prisoners.

Michael Saxby, farmer, sworn.

Thomas Sutton, farmer, challenged by the prisoners.

John Wenham Lewis, esq. challenged by the crown.

Thomas Johnson, farmer, challenged by the crown.

Silas Newman, farmer, sworn.

Isaac Tomlyn, esq. sworn.

John Taylor, farmer, challenged by the crown.

Thomas Fry, farmer, challenged by the crown.

Thomas Selby, esq. challenged by the crown.

Thomas Knewles, farmer, challenged by the crown.

John Taylor, esq. challenged by the crown.

Barnard Blake, esq. not properly described in the panel.

William Blatcher, esq. challenged by the crown.

Mr. Plumer.—My lord, the crown have now challenged above twenty; your lordship will recollect what was stated by lord chief justice Eyre, in the case of Mr. Tooke.

Mr. Justice Buller.—Have you any decision of the Court? The mischief, if there is any, must be corrected by parliament, it cannot be by us.

Mr. Plumer.—That learned judge inquired into the number that had been challenged by the crown in that instance——

Mr. Justice Buller.—He might so; but will you show me any authority for it, any dictum?

Mr. Plumer.—I have no other authority than this of lord chief justice Eyre, a judge of great experience in crown law.

Mr. Justice Buller.—If he had heard any argument upon the subject, perhaps he might have thought again, and have perceived that the Court has no power.

Mr. Plumer.—He certainly had considered it.

Mr. Justice Buller.—He certainly did not decide it; there is no decision upon the subject.

Mr. Gurney.—Lord chief justice Eyre said, when he found that seven only had been challenged by the crown, that the indulgence had not been abused.

* See lord Preston's case, *ant*, vol. 12, p. 675.

† But see the case in this Collection, vol. 6, p. 148.

‡ In this Collection, vol. 16, p. 93.

§ In this Collection, vol. 12, p. 1377.

|| See vol. 12, p. 332.

Mr. Justice *Buller*.—Mr. Gurney, I do not consider it an indulgence.

Mr. *Solicitor General*.—It is no indulgence; and it is the grossest misconstruction of the act to suppose the contrary.

Mr. Justice *Buller*.—He did not decide it.

Mr. *Dallas*.—It was our duty, when we found it stated as words falling from lord chief justice Eyre, to mention it; it was our duty at least to bring that authority before the Court; now it is disposed of by the Court, we acquiesce.

Richard Peckham, gent., not properly described in the list delivered to one of the prisoners.

Richard Hosmer, farmer, challenged by the crown.

James Atkinson, farmer, challenged by the crown.

Thomas Seabrook, farmer, challenged by the crown.

Thomas Henham, farmer, sworn.

William Fleet Larkin, gent., challenged by the prisoners.

Walter Barton, farmer, sworn.

John Miller, gent., sworn.

John Simmons, farmer, sworn.

THE JURY.

Charles Haskins,
William Small,
William Cronk,
Richard Ray,
James Chapple,
Michael Saxby,

Silas Newman,
Isaac Tomlyn,
Thomas Henham,
Walter Barton,
John Miller,
John Simmons.

The clerk of arraigns charged the jury with the prisoners in the usual form.

The Indictment was opened by Mr. Abbot.

Mr. *Attorney General*.—May it please your Lordship; Gentlemen of the Jury:—In the discharge of the duty of the office which I hold, I have been most imperiously called upon to lay before a grand jury of this county the charge contained in the indictment, which you are now solemnly sworn to try; and, gentlemen, I am bound to act according to the best sense I can form of my duty; and therefore, however painful it is to me so to state this matter to you, I hold it to be my bounden duty to state to you that I am not aware how it is consistent with possibility that, upon the trial of this indictment, you can receive such an answer from the prisoners, to the proof which I have to lay before you, as can justify you in the discharge of that duty, which you have this day taken upon yourselves, namely, to make deliverance according to the truth between the country and the prisoners at the bar, in pronouncing that they are not guilty. I say, it is not within the reach of my comprehension what facts can possibly exist, that will form an answer to the evidence which I have to lay before you, if you shall think that evidence worthy of credit.

Gentlemen, the charge made by this indictment is, in the language of the law, First, a charge of compassing the king's death: Secondly, a charge of adhering to his majesty's enemies—giving them aid and comfort: And lastly, a charge of compassing and imagining to invite strangers to invade the land. With reference to each of these charges, the indictment has stated various overt acts, and I shall state to you, in a very few words, under the correction of the wisdom which presides here, what an overt act of high treason is.

In order that persons accused of high treason may know what the charge is that they are to meet in a court of justice, and may therefore be prepared for their defence, the law not only requires that you should impute to them that they have been guilty of compassing his majesty's death, of adhering to his majesty's enemies, giving them aid and comfort, and of intending to invite strangers to invade the land, but it also requires that the indictment should detail the overt acts, that is, those facts, and those circumstances, which, if they have taken place, are proofs of that imagination to put his majesty to death, of that adherence to the king's enemies, and of that intention to invite strangers and foreigners to invade the land: and it is necessary, in order to convict the prisoners, that the overt acts, or some of them, as laid in the indictment, should be proved: that the proof should be made by two witnesses to the same overt act, or by one witness to one overt act, and by another witness to another overt act of the same treason.—This is sufficient evidence within the meaning of the law, and it is competent also, after the overt acts stated upon the indictment are proved, to give evidence of other overt acts of the same nature, though not laid in the indictment, on the part of the prosecution.

It is not my intention, gentlemen, to trouble you with any farther observation upon the law, which will be to be applied to the facts of this case. If the notion of the law, which I am about to state, or the inferences which I shall draw from the facts, happen to be incorrect, I am sure I feel it to be my duty equally on the part of the prisoners as on the part of the public,—and indeed it never can be the interest of the public that justice should not be fairly dispensed between the country and the prisoners—I feel it to be equally my duty to both to supplicate those who will deliver the law to you with authority, to correct me fully with respect to any mistake that I may make in point of law, or any wrong inference which, in their judgment, I may deduce from the facts, submitting the inferences from facts ultimately to your judgment. As to the law, I shall say only, that I take it to be clear that, provided the facts laid in this indictment are proved to your satisfaction, they do unquestionably in law bring the cases of the prisoners within

the true meaning of the acts of parliament, upon which the indictment is framed.

Gentlemen, with respect to the facts, I shall wish to execute the duty, which is imposed upon me in this momentous business, by endeavouring, with as little of observation as I can, but with as much as may be necessary to connect the circumstances of this case, so far as to make the case intelligible to you, to detail clearly those facts, which, I apprehend, will be proved—will be proved by evidence of a nature, the greatest part of which admits of no contradiction, that is, by written evidence. In this manner I propose to state to you what are the circumstances, which constitute, in the apprehension of the person who now addresses you, the guilt of the prisoners upon whose guilt or innocence you are this day to decide.

In order to make this case more intelligible, it may be useful first to state to you some circumstances which happened upon Tuesday the 27th, and Wednesday the 28th of February last. After I have stated those circumstances to you, I shall then take leave to call your attention to the conduct of the respective persons at the bar for several days previous to those days, Tuesday the 27th and Wednesday the 28th of February. You will find, if I am correctly instructed, that upon the afternoon of Tuesday the 27th of February, three of the persons now at the bar, namely, the person indicted by the name of Quigley, or O'Coigly, another prisoner of the name of Allen, and another of the name of Leary, came from Whitstable, in this county, to a place called Margate, to an inn called the King's-head; there Mr. O'Coigly came, as I shall have occasion to prove to you, in the name and character of a captain Jones. You will be so good as to keep in memory that fact throughout what I have to state to you. Allen, who came with him, came in the character of his servant, which he is not; and Leary, who came with them, and who is the servant of Mr. O'Connor, came as the servant of Mr. O'Connor, and, as I think I shall be able to satisfy you, to meet his master Mr. O'Connor at the King's-head, Margate. I shall state to you presently, but it seems to me to be convenient for the purpose of your understanding this case, that I should not do it at this moment, in what manner these three persons travelled upon that Tuesday from Whitstable to Margate.

They had not been at the King's-head at Margate any considerable time, whether a quarter of an hour, or more or less, is not very material, when there arrived at the same inn Mr. O'Connor, who, you will find throughout this business, assumed the name of colonel Morris, and the other prisoner, of the name of Binns, who, you will find throughout this business, took the name of Williams, and was corresponded with by that name by Mr. O'Connor, as I shall prove to you by his letters, which will be produced presently.

They came upon the same afternoon from Deal, in this county, to the King's-head at Margate. In the course of that evening, and during the next morning (I shall state to you hereafter somewhat more in detail the circumstances which are the foundation of the representation which I am now making to you) they conducted themselves in that house as I now mention; namely, Mr. O'Connor assumed the name of colonel Morris, and Mr. O'Coigly assumed the name of captain Jones; Allen acted as the servant of captain Jones; Leary acted (as he was) as the servant of Mr. O'Connor; and Mr. Binns professed to be a gentleman, under the name of Williams, in the company of colonel Morris and captain Jones. They spent their evening and part of the next morning under such circumstances, as I have now represented to you.

In the course of the next morning, whilst they were meditating, as I shall be able to prove to you, the removal of all their baggage from Margate to Deal, in this county, for a purpose, as to the nature of which I think you will have no doubt presently, they were arrested by two officers, who will be called to you, the one of the name of Revett, and the other of the name of Fugion. Mr. O'Coigly was sitting in a room, where breakfast was preparing for him, and there hung upon a chair in that room a great coat, in the pocket of which you will presently be satisfied this black pocket-book, which I now have in my hand, was contained; Mr. O'Coigly having slept in a room on one side of that in which he was sitting, and Mr. O'Connor having slept in a room on the other side of that in which he was sitting. Mr. O'Coigly was arrested under the circumstances which I am now mentioning to you; Mr. O'Connor coming from his room to the same breakfast-room was arrested also. Mr. Binns, Allen, and Leary were likewise arrested in different parts of the house.

I should have stated to you, that on the preceding evening, when O'Coigly, Allen, and Leary came to this house called the King's-head, they brought with them in a cart which was driven by a person of the name of Thomsett, who will be called as a witness, a very large quantity of baggage, deal boxes, portmanteaus, mahogany boxes, leather cases, and other matters of that sort, which you will have an opportunity of seeing, and which therefore I need not more particularly describe to you. When Mr. O'Connor, under the name of colonel Morris, and Mr. Binns, under the name of Williams, came from Deal to Margate, they brought no baggage with them, and you will permit me to beg your attention to this fact, because it will be material, I think, for your consideration presently. The whole of the baggage was under the care of Allen and Leary, as the servants of colonel Morris, that is, Mr. O'Connor, and of captain Jones, that is, Mr. O'Coigly, except that some of these boxes, which were more valu-

able in their contents, appear I think to have been taken into the bed-room in which Morris and Jones slept.

Gentlemen, having stated to you this circumstance, that these persons came to the same house on the preceding evening, and now adding, whilst it occurs to me, that upon Mr. O'Connor's coming as colonel Morris with Mr. Binns to the King's-head at Margate, he or Binns, one or the other of them, asked if there was a captain Jones there; and that O'Coigly was introduced as captain Jones, and that they all spent the evening and part of the next morning in the manner in which I have represented, it is hardly necessary for me here to observe that, if the case rested upon this, you could not have a doubt but that they were persons tolerably well acquainted with each other. When this party was seized in the house, I think you will find by evidence that accompanied that fact, as well as by evidence which I have to offer you as to their conduct subsequently, and after they were brought to London, that they themselves were so apprehensive that it would be dangerous to acknowledge any acquaintance with each other, that they positively denied knowing each other, and that they were so well satisfied that the contents of the baggage, and the other things which were seized, were property that it was extremely dangerous indeed for them to acknowledge as being theirs, that, notwithstanding the value of that property, you will find presently, if I am rightly instructed as to the evidence, that they not only repudiated all knowledge of each other, but that they most positively denied that any of them were the owners of that baggage, or any part of it, the contents of which I am about to mention to you. I have reason to think that the gentlemen who was apprehended as colonel Morris, was not known to be Mr. O'Connor till he arrived in town, and the question was there asked him, who he was? I state this because I take the apprehension of Mr. O'Connor to have been that which was as unexpected to those who did apprehend him, as it was to the person who was apprehended.

Gentlemen, I will now state to you one paper, and one paper only at present, meaning to call your attention to it again by-and-by, which was found in the pocket-book of Mr. O'Coigly; when I call it the pocket-book of Mr. O'Coigly, it might perhaps, if it were necessary, be proved to be so, by troubling you with asking several questions to ascertain whose was the property of that great coat, in the pocket of which the book was found; but the contents of the book itself most decidedly prove it to be the pocket-book of O'Coigly, and they not only most decidedly prove it to be the pocket-book of O'Coigly, but I think you will find that they establish that Mr. O'Connor, under the name of colonel Morris, and some other name, for I think he used another name, the name of Wallis, was also

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the correspondent of that Mr. O'Coigly, as well as the correspondent of Mr. Binns, who went under the name of Williams.

I shall state the paper in the very words of it, and, gentlemen, I beg your most particular attention to it, because I have no hesitation now to state, stating it always under the correction of those who will give you the law with more authority than any of us sitting round this table can presume to venture to state ourselves as giving it to you; but I do venture to state as most clear, that when I have gone the length of satisfying you that any man or men had the custody of this paper with the intent to carry it into France, for the purpose of its being put into the hands of those to whom it is addressed, and when I have gone the length of doing that by such evidence as the law of England requires in the case of high treason, it is not possible for a jury, acting according to their oaths, to say that that individual, or that those individuals, are not guilty of high treason. Gentlemen, great as the importance of this paper is to all the prisoners, who may be affected by any thing relative to it, I think I am warranted now in saying, that I shall have occasion presently to read one or two papers, but more particularly one in the hand-writing of Mr. O'Connor, the prisoner at the bar, which, with reference to him, is full as important as this.

Gentlemen, this paper is thus addressed, and it is with very painful feelings that I state to you that it could be so addressed from any persons in this kingdom to those into whose hands unquestionably it was meant to be delivered:—"The Secret Committee of England to the Executive Directory of France."—"Citizen Directors; We are called together on the wing of the moment, to communicate to you our sentiments: the citizen who now presents them to you, and who was the bearer of them before, having but a few hours to remain in town, expect not a laboured address from us, but plainness is the great characteristic of republicans.

"Affairs are now drawing to a great and awful crisis: tyranny, shaken to its basis, seems about to be buried in its own ruins. With the tyranny of England, that of all Europe must fall: haste, then, great nation! pour forth thy gigantic force: let the base despot feel thine avenging stroke; and let one oppressed nation carol forth the praises of France at the altar of liberty."—"Now, gentlemen, I beg your attention to the next passage I am going to read—"We saw with rapture your proclamations," that is, we, England, saw with rapture the proclamations of you, the Executive Directory of France. "They met our warmest wishes, and remove doubts from the minds of millions. Go on, Englishmen will be ready to second your efforts." So much as to the disposition of our countrymen.

"The system of borrowing, which has hitherto enabled our tyrants to disturb the peace

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of a whole world, is at an end: they have tried to raise a kind of forced loan," that is, the voluntary contributions, "it has failed. Every tax diminishes that revenue it was intended to augment; and the voluntary contributions produce almost nothing. The aristocracy pay their taxes under that mask; the poor workmen in large manufactories have been forced to contribute, under the threat of being turned out of employ. Even the army have been called upon to give a portion of their pay to carry on the war; by far the greatest part have peremptorily refused to contribute to so base a purpose; and the few that have complied, have in general been cajoled, or reluctantly compelled to it."—Gentlemen, the wickedness of this paper is augmented in a twenty-fold degree, by the falsehood of it.

"Englishmen are no longer blind to their most sacred claims; no longer are they the dupes of an imaginary constitution; every day they see themselves bereft of some part of the poor fragment of democracy they have hitherto enjoyed; and they find, that in order to possess a constitution, they must make one.

"Parliamentary declaimers have been the bane of our freedom; national plunder was the object of every faction, and it was the interest of each to keep the people in the dark; but the delusion is past, the government has pulled off its disguise, and the very men,"—I wish this passage to be deeply attended to—"the very men, who, under the semblance of moderate reform, only wish to climb into power, are now glad to fall into the ranks of the people. Yes, they have fallen into the ranks, and there they must for ever remain, for Englishmen can never place confidence in them."—Who they are it will be incumbent upon those to explain to you who have the possession of this paper.

"Already have the English fraternized with the Irish and Scots, and a delegate from each now sits with us. The sacred flame of liberty is rekindled; the holy obligation of brotherhood."—The very words of the test of that union which I shall have occasion to take notice of to you presently was about to be created in this country—"The holy obligation of brotherhood is received with enthusiasm: even in the fleets and the armies it makes some progress: disaffection prevails in both, and united Britain burns to break her chains.

"Fortunately we have no leader. Avarice and cowardice have pervaded the rich, but we are not therefore the less united: some few of the opulent have, indeed, by speeches, professed themselves the friends of democracy; but they have not acted: they have considered themselves as distinct from the people, and the people will, in its turn, consider their claims to its favour as unjust and frivolous. They wish, perhaps, to place us in the front of the battle, that, unsupported by the wealth they enjoy, we may

perish; when they may hope to rise upon our ruin; but let them be told, though we may fall through their criminal neglect, they can never hope to rule; and that Englishmen, once free, will not submit to a few political impostors.

"United as we are, we only wait with impatience to see the hero of Italy, and the brave veterans of the great nation: myriads will hail their arrival with shouts of joy. They will soon finish the glorious campaign: tyranny will vanish from the face of the earth, and, crowned with laurel, the invincible army of France will return to its native country, there long to enjoy the well-earned praise of a grateful world, whose freedom they have purchased with their blood."—This paper, gentlemen, you will find, is under a seal, and it is dated the 6th Pluviose, A. R. P. G. 6, which I take to mean in the sixth year of the Gallic Republic.

I shall proceed now to state to you the circumstances under which these different persons came from London to the different parts of this county, in which it will appear from the evidence that they were, and I shall submit to you, that those circumstances, connected with the other facts to be given in evidence, will leave no doubt in your minds with what intentions, as to that paper, these parties came into the county of Kent. Gentlemen, the prisoner Binns, who upon this expedition went by the name of Williams, occupied the lodgings of a brother of his, a person of the name of Benjamin Binns, who will appear to you, upon the evidence, to be pretty closely connected with the prisoner O'Coigly, at No. 14. Plough-court, Fetter-lane, at the house of a person of the name of Evans, who at that time was secretary to a society which has been known in this country by the name of the London Corresponding Society. Mr. Benjamin Binns being out of this country, the prisoner John Binns, who went in this transaction by the name of Williams, occupied his lodgings at that house. You will also find, that shortly previous to the time of which I am now speaking, namely, Wednesday the 21st of February, a Mr. and Mrs. Smith, having in that house one floor of it as their separate dwelling-place, the prisoner Binns hired for the prisoner Allen (who appeared in this transaction as the servant of O'Coigly, when he went under the name of captain Jones), hired for Allen a room in that part of this house, No. 14, which formed the apartments of Mr. and Mrs. Smith.

Upon the 21st of February the prisoner Binns left London, as I submit to you, for the purpose of hiring vessels to go to France, and to carry those persons, or some of them whom I have named, and their papers, and such other intelligence as they were capable of giving. He left London. He came down to Gravesend, I think, in the hoy; at Gravesend he took the coach to Rochester; upon the Thursday he came to Canterbury; and upon

he Friday morning he applied himself to two persons who will be called to you as witnesses, one of the name of Claris, the other of Ashouy, and represented himself to have some concern in what he termed the smuggling line, and expressed a wish for a recommendation to some persons at Whitstable. And I beg your attention to this circumstance, that upon the Friday he wished to have recommendations to this place called Whitstable. These witnesses will inform you, that in the course of that conversation, the names of three or four persons, all of whom will be called to you as witnesses, who live at Whitstable, and were the owners of vessels, were mentioned to this Mr. Binns, that upon the Friday morning he went from Canterbury to Whitstable, and that he there saw several other witnesses who will be called to you. With those other witnesses he entered into treaty, and with each of them for a boat, in the first instance to go to Flushing: it was represented to him, that he could not have a boat to go to Flushing, because the port being in the possession of the enemy, and all vessels there under an embargo, the vessel which he wished to hire would not have the means, or rather would not have the permission, to come back again to this country; that it was therefore an extremely dangerous business. The danger with respect to Flushing being stated, a proposition was then made on his part that they should go to Havre, or Calais, or some other place, I think, upon the coast of France; and upon a representation how extremely dangerous this service was, you will find, from the evidence of all these witnesses, the same fact being confirmed by the evidence of all the Whitstable witnesses, and by the witnesses who will be called from Deal, and therefore in truth proved by five, six, or seven witnesses at least, that Mr. Binns represented that there could be no hazard of that sort; that he had the means of securing the return of the vessel; that they might depend upon it that the vessel would not be detained there more than two or three hours at the utmost; and that he had so much in his power the means of securing the return of the vessel, that he intimated to some of them the possibility of receiving back a cargo, which you know in the terms of persons who smuggle upon the coast of Kent, as well as upon other coasts, at least I happen to know from official information upon subjects of this sort, they call a crop: that they might have a crop back again. They representing still the difficulties of the business upon which he wished them to engage, stated farther the absolute necessity, if they undertook this business, of being extremely well paid for it; and you will be so good as permit your attention to go along with me when I state this fact, that it was agreed that no less a sum than three hundred pounds, or three hundred guineas (when I come to state to you the contents of the boxes, you will see the mate-

riality of this) should be deposited: it was first proposed that it should be deposited by Binns in the hands of Claris of Canterbury, but it was insisted, on the other hand, that it should be deposited in the bank of Canterbury as a security for the return of the vessel. And besides that deposit of three hundred pounds, or three hundred guineas, the very large sum of one hundred and fifty pounds, or guineas, was to be given for the trip over to Flushing, or to any other of the places which I have mentioned, in case the vessel came safe back, and came immediately back. If she did not come immediately back, then the three hundred pounds were to remain as a deposit for the payment of a given sum per month during the time that she should be detained in that country.

Gentlemen, this happened, as I before stated, upon the Friday morning, the 23rd. It appears, however, that Mr. Binns did not like these terms; he thought them too extravagant, in all probability he thought them too extravagant, and he therefore returned in the morning of Friday to Canterbury, and in the course of the next morning he went to Deal, for the purpose of trying whether at Deal he could get a boat, and if he could, whether he could get it upon better terms. I shall call to you two or three persons with whom he had conversation when he was at Deal, upon the Saturday morning, and you will find from the evidence which they have to give to you, that he made the same sort of propositions to them which had been made to the men at Whitstable: that they, however, proposed to agree with him upon more reasonable terms, and I think a person either of the name of Campbell or of Hayman, who will be called, pointed out the extreme probability, if they came early in the next week, of finding a boat that, under neutral colours, would go to Flushing, Calais, or Havre, for the sum of sixty pounds, or sixty guineas.

Mr. Binns, upon the Saturday evening, returned again to Canterbury, and I now beg leave to remind you that it may be material that you should recollect that the first place he went to was Whitstable, for, in the conversations which passed at Whitstable, and the conversations which passed at Deal, you will find that Mr. Binns stated, that three or four persons, who had a concern in this transaction, would be at Whitstable on the Sunday evening. When Mr. Binns got to Canterbury on the Saturday evening, under the idea that he might get to London before the persons that were concerned with him in this transaction should set out from London; he went up from Canterbury to London, I believe in the Canterbury coach, but did not arrive in London time enough to be there before colonel Morris and his servant, that is, Mr. O'Connor and his servant, and captain Jones, that is Mr. O'Coigly, and his servant, were on board the Whitstable hoy, and had sailed from the Tower stairs. For the pur-

pose of your understanding this case, it becomes necessary for me here, gentlemen, to state to you, before I mention the transactions of the Sunday, the transactions of the Saturday, as far as they relate to the prisoners, other than Binns, who assumed the name of Williams. It will appear in the evidence that Mr. O'Connor had a lodging in Stratton-street, which is at the west end of London; it will appear also that he was intimate with a person of the name of Bell who lived in Charter-house square, and that he occasionally dined with that gentleman, that he occasionally slept at that gentleman's house, and it will likewise appear to you, that Mr. O'Coigly, introduced as captain Jones, occasionally dined at that house with Mr. O'Connor. Upon the Saturday, previous to the Sunday, when they came down together in the Whitstable hoy, Mr. O'Connor and Mr. O'Coigly, the latter under the name of captain Jones, dined together with Mr. Bell, of Charter-house square; that evening Mr. O'Connor slept at Mr. Bell's; that evening Mr. O'Coigly slept, under the name of captain Jones, at No. 14, Plough-court, the house of Evans, in which lodgings had been taken for Allen, who personated the servant of Mr. O'Coigly, assuming the name of captain Jones, but who was not his servant; and it will be proved to you that Mr. O'Coigly, who the next morning went down to Whitstable, under the name and appearance of captain Jones, slept on the Saturday night in the same bed, I think, at least in the same room, with Allen, who, upon the Sunday, personated the servant of captain Jones; we therefore bring together, you see, on the Saturday, Mr. O'Coigly and Mr. O'Connor, dining at Mr. Bell's, where Mr. O'Coigly had often dined under the name of Jones; and we bring together on the Saturday night, Mr. O'Coigly, under the name of captain Jones, with Allen, who personated his servant, the next day sleeping in the same room, the lodging of Allen, at No. 14, Plough-court, Fetter-lane, and they slept in the room, which, in that house, had been let to Benjamin Binns, the brother of John Binns, who now is at the bar, and who assumed the name of Williams, and which room John Binns had occupied in the absence of his brother Benjamin.

Gentlemen, I should here state to you, before I bring the parties together in the Whitstable hoy on the Sunday, that Mr. O'Connor, who, in this transaction, generally went by the name of colonel Morris, wrote or addressed the following letter to Mr. William Williams, at the Fountain-inn, St. Margaret's-street, Canterbury; you will see that it is quite clear that the parties, who went from London, expected to meet Binns at Whitstable; that it is quite clear that Binns came to town with the intent to go with them to Whitstable, or to go with them to Deal; but not arriving in time, they had gone off in the hoy from Tower stairs to Whitstable, expecting to find him there; and I will give you an account of

his journey after them presently.—On the Saturday afternoon, at Mr. Bell's, Mr. O'Connor, after Mr. O'Coigly under the name of Jones had dined with him at Mr. Bell's, desired Mr. Bell to address a letter, which he produced to him, without any address upon the back of it, to Mr. William Williams, Fountain inn, St. Margaret-street, Canterbury; Mr. Bell, at the instance of Mr. O'Connor, did address that letter to Mr. William Williams; it was afterwards found upon Williams, that is, upon Binns, and it will be verified to you to be the same letter, and it is in these terms:—

"Dear Friend;—I set off to-morrow morning in a Whitstable hoy, and hope to be at Whitstable by night, if the wind is fair; I shall take all the parcels you speak of with me.—Your's sincerely."

Now, gentlemen, what do you think is the name at the bottom of this letter, which the prisoner, Mr. O'Connor, desired Mr. Bell to address for him?

"Your's sincerely, JAMES WALLIS."

"I get your letters."

This is dated London, the 24th of February, the day preceding the Sunday on which they were to meet. You will find that the baggage, which was put on board the Whitstable hoy, was carried from Bell's house to the Whitstable hoy, by two servants of Mr. Bell, who, if it be necessary, can be called; indeed, as they have but a short word to state to you upon that matter, I shall call them. Mr. O'Connor and Leary, on Sunday morning, went from the house of Mr. Bell to the Whitstable hoy, Mr. O'Coigly and Allen, under the characters of captain Jones and his servant, having slept together in the bed of Mr. Binns, on the Saturday night, were called by the watchman, to whom they promised a small sum of money for calling them up early in the morning, and they went together from Evans's in Plough-court, at five in the morning, on board a small brig or vessel which lay near the Whitstable boy, and, upon Mr. O'Connor, and Leary his servant, coming on board the hoy, O'Coigly and Allen came on board also from the brig as captain Jones and his servant, and these four proceeded down the river till they came to Whitstable, in the evening of the Sunday. It will be stated to you what baggage they had on board; the baggage which was on board will be traced from on board to the Bear and Key inn, Whitstable, and will be traced from thence to the house at Margate, where it was seized. You will hear the witnesses speak to the demeanour of these persons, what care and anxiety they manifested about particular parts of this baggage; and you will hear what parts of the baggage were taken on shore that night, and what were not taken on shore till the next morning; some parcels, of which the prisoners seemed to be particularly careful, were taken on shore, by, I believe, Mr.

O'Connor and by Mr. O'Coigly, assuming the names of colonel Morris and captain Jones, the rest of the baggage remained on board till it was landed the next day, together with Allen and Leary the servants, and was searched in the manner I shall state, by Mr. King, who was the land-waiter at Whitstable. Having brought from Tower-stairs Mr. O'Connor and Mr. O'Coigly, under those names, you will find that they, who, if I am rightly instructed, denied all knowledge of each other, upon the important occasion I have before mentioned, that they went to the Bear and Key at Whitstable together, that at the Bear and Key, as Allen and Mr. O'Coigly had slept together in the same room on Saturday night, so these two gentlemen, Mr. O'Connor and Mr. O'Coigly slept together in the same room at the Bear and Key inn, at Whitstable, on the Sunday night; and you will have evidence that, in the course of that night, they were overheard counting money, and holding a conversation about that money, the particulars of which the witness that I shall call, will state.

Gentlemen, when these four persons got to Whitstable, they did not find there that Mr. Binns, who went under the name of Williams, whom they expected to find there; and Williams, when he came to town, not finding them in town, immediately set out on board the hoy to Gravesend. At Gravesend he applied to a person of the name of Assiter: that man procured him a horse from an acquaintance of his, in the town of Gravesend; and he came in the course of that evening again to Canterbury, to the Sun inn, kept by a person of the name of Nicholas Cloke; when he came to the inn at Canterbury, you will find from his conversation, which will be given in evidence to you, that his purpose was to have gone that night to Whitstable from Canterbury, which was about six miles distant; but the party to whom he joined himself, for he there saw some of the persons he had seen the preceding Friday, persuaded him to stay there that evening: he did stay there that evening; and the next morning he left the house, coming back again a few hours after he had left it, in company with Mr. O'Connor, that gentleman still assuming the name and character of colonel Morris.

Upon the Monday morning, after Mr. O'Connor and Mr. O'Coigly had got up, and before breakfast, they walked out; Mr. Binns, you see, according to this state of the fact, must have walked out also from the inn at Canterbury. I state it to you as probable, as that indeed which one cannot but believe, though, strictly speaking, I cannot represent it as being actually proved to you, that Mr. O'Connor and Mr. O'Coigly had walked towards Canterbury: that Mr. Binns had walked from Canterbury towards Whitstable; and that they had met upon the road; and I think you will have no difficulty in inferring also from the evidence, which I am

presently to state to you, that, previous to the time at which they had parted, it was agreed that, after certain other transactions should have taken place, they should meet again at Margate. I say it is probable that these persons had walked from Whitstable towards Canterbury, and that the other had walked from Canterbury towards Whitstable, because Mr. O'Coigly went back again to the inn at Whitstable without Mr. O'Connor, and Mr. Binns came back again to the Sun at Canterbury with Mr. O'Connor.

Gentlemen, this happened, as I have been stating to you, upon the Monday morning; the parties did not meet again till Tuesday afternoon; and it becomes necessary that I should state what I take to be the effect of their transactions on Monday afternoon and Tuesday morning: that is, of Mr. Binns and Mr. O'Connor, who were together, and the transactions of Allen, O'Coigly, and Leary, who were left at Whitstable. The baggage, which I before mentioned, was brought on shore (and it included all Mr. O'Connor's baggage, there being a direction upon part of it to colonel Morris) on the Monday: and it will be in evidence that one person paid for the passage of all of them: that baggage which came on shore on the Monday was searched by the Custom-house officer. It was represented to the Custom-house officer that some of the boxes could not be opened; Leary, I think, was the person who made this representation: he said that his master, colonel Morris, was gone to see a friend at Dover, and had got the keys with him; and Leary mentioned that his master was going to the East Indies. You will hear that in a conversation which Mr. O'Coigly had with the master of the inn, with reference to colonel Morris, he represented that colonel Morris was going to the West Indies. They had a good deal of conversation about the means of removing this baggage to Margate: there was an idea of sending it by water: that was frustrated by an apprehension, which was very much felt, whilst they were going from Tower Stairs to Whitstable, lest they should be, as it was called, overhauled; that is, lest the baggage should be searched. It was at length however, agreed, that a person of the name of Thomsett should be hired to take all that baggage in a cart from Whitstable to Margate: and it was agreed that captain Jones, that is, Mr. O'Coigly, that Allen, as his servant, and that Leary, should walk all the way from Whitstable with this cart to Margate, alongside of it, taking care of it till it should be deposited at Margate. Accordingly, Thomsett's cart being engaged, the baggage was put into that cart. You will hear what was the demeanour of the three prisoners that went with the cart; and Thomsett conveyed the baggage, the prisoners walking along with it all the way from Whitstable to Margate, where they arrived, as I before told you, in the afternoon

of the Tuesday. In the mean time, Mr. O'Connor, as colonel Morris, and Mr. Binns, as Williams, went from Canterbury to Deal without any baggage: when they got to Deal, you will hear, from the witnesses called from that place, that the conversation about going to Flushing and to Calais and other places, was much of the same nature as that I have stated to you Mr. Binns had held, when he was there upon the preceding Saturday. It turned out that the person who, it was supposed, would have had his boat ready in the beginning of that week had not his boat ready the beginning of that week: but there was an expectation that, in the course of two or three days, the boat might be supplied; and a person wrote down in pencil a direction to a man of the name of Lancelot Hayman, to whom the parties should apply, after they should have come a second time from Margate to Deal. That direction in pencil, it will be proved, was found in the purse of Mr. O'Connor, at Margate, when he was apprehended. In what manner Mr. O'Connor and Mr. Binns went from deal to Margate I am unable to state to you; but in point of fact, as I before told you, they did arrive at Margate within a quarter or half an hour after Mr. O'Coigly, Allen, and Leary, had arrived there: and I think, under these circumstances, I am fully justified in having represented to you that they must have understood, when they parted on the Monday morning, that they were to meet together at Margate.

Gentlemen, having now traced all these parties from London through their different transactions till they came together at Margate, I do not repeat to you the transactions of the Tuesday evening at Margate, or the transactions of the Wednesday morning at Margate, nor do I state to you again the circumstances under which they were all apprehended; but I take leave, in a short word, to desire you to recollect what the substance of that paper was, which I have read to you, and to recollect that, if I am rightly instructed, I shall prove to you that these persons, being thus united in one common design from the Saturday morning, I may say from the Wednesday morning preceding the Wednesday morning following, when they were apprehended, thought proper to be perfectly ignorant of each other, to be perfectly ignorant of the contents of the baggage, and the pocket book, and every thing that had any relation to any thing in which they had been concerned, or to any of those transactions in which they had been engaged, and to represent themselves as perfect strangers to each other though they had been living with this closeness of intimacy during the period, the transactions of which I have been representing to you.

With respect to the prisoner Mr. O'Connor, it is now my duty to state to you the substance of two papers, which, as it appears to me, will call for your most particular attention

—that any person who had that pocket book in his possession, containing that paper, must feel a great anxiety to shake off all knowledge of that pocket-book, and all connexion with its contents, is a matter that, I think, cannot surprise you or any body who hears me. When I now state to you what other paper was found in one of the boxes, which, I believe, will be proved to you beyond all doubt to belong to Mr. O'Connor, and when I state to you the contents of a letter in the hand-writing of Mr. O'Connor, which has been found in the possession of lord Edward Fitzgerald, and which will be produced here to-day—I am sorry to say it, gentlemen, but it is my bounden duty to say it, that, unless some account is given of this matter, God grant they may be able to give an account of it, other than in my anxious view of this case, I can at present form any expectation of hearing, I have not a conception, even if the evidence I have already stated were not sufficient in law to connect Mr. O'Connor with the design of those who had this paper in their possession, how it will be possible to deny the intention of that gentleman to go to France for the purposes expressed in this paper—I will first read the letter found in the possession of my lord Edward Fitzgerald, and you will see clearly from the contents of this letter, that it was written about the same time that the transactions I have been mentioning took place.

“My dear friend—I have had a letter written to you these ten days, and have not had an opportunity of sending it to you, you cannot conceive how it has vexed me not to be able to find a good, or indeed any way of getting Maxwell off”—It will be incumbent upon the prisoner to explain this letter if he can—“he has been most active to try and get away from his creditors, but they so watch him, and this embargo by the enemy makes it most difficult, though I think he will be off in three days from this.—It is said that lord Fitz-William is going over to Ireland.” The passage that I am about to read, relates to what we have heard a great deal of—Catholic emancipation, and you will see how friendly the writer of this letter is to the idea of Catholic emancipation: he says, that—“great hopes are entertained of separating the Catholics from the union. This will be your and every honest man's business to prevent,”—“and though a few of the old committee patriots should attempt it, the people are most honest. I received both your letters, the one to Debretts, and the one by the young men. I shall do all I can for them,” that is for the young men, “and hope with effect in three days. If that fails, I will make it a point with Maxwell that he goes by Hamburgh,” not that he goes to Hamburgh, but that he goes by the way of Hamburgh, and he will make it a point with Maxwell that he goes by Hamburgh—in a given case—that is if all that he can do for the young men in

three days, shall fail, then he is to make it a point with Maxwell to go by Hamburg, "indeed he is in the greatest impatience to be off. The man of consideration told me he heard the government here had intercepted a dispatch from France for Ireland, which promised great assistance: they are here in great consternation;"—this passage tallies very much with some parts of the address I read,—“the money and their commerce are very low. The black terrier and his little brother, are but sorry curs: the latter has become a land-broker, and, if I am rightly informed, has found the little priest, and the sugar baker, and many others have sent him their money to lay out for them, and thus to have their agent, they have been at work, Chevalier was the person who wrote to my friend”—Gentlemen, I must submit it to you whether this passage also does not connect itself with the address, which I have read to you—as to a certain set of men who are supposed to have fallen into contempt “Chevalier was the person who wrote to my friend to have nothing to do with Nicholson or her set, for that they had fallen into contempt from the appearance they cut. I send two copies of the pamphlet, but they must not be let out of the room you and Pamela read them in, until you hear from me, as otherwise I should be in limbo: there is not one out here, nor will there until I can do it in safety; you can have an edition printed in Ireland. I shall send you a hundred copies: for the instant, they are to be sold at three shillings and sixpence, and of course not to be given to any that cannot be depended on to avoid prosecution.” Gentlemen, I call your attention, and that of the Court most particularly to the next passage—“the instant I get to Williams you shall hear from me, I mean to be as active as I can.”

When I first read this over, I thought the word *Williams* meant Binns, but, in a part of Mr. O'Connor's razor case was found a very curious paper, a copy of which I have now in my hand, the original of which will be produced to you. It is obvious from the text and terms of this letter that it is written in what secret correspondents call a cypher—you have the Black Terrier; you have—the man of consideration—you have Nicholson and her set—the sugar baker—the land broker; and various phrases, which you do not understand, but you have an explanation of that particular expression, “The instant I get to Williams you shall hear from me,” for the paper that I am going to read appears to me to be demonstration that *Williams*, meant *France*, and that *Paris* was to be the place of this gentleman's residence.—The first word in it is *France*—the next is *Spain*: the third word in it is *Holland*; and then it goes through a great variety of the landing places of Ireland, and some of England, which you will hear read to you.—In one column it contains the names of different countries

and persons, and in an opposite column it gives the names of the different countries and persons, as they are to be represented in the correspondence, which was to take place. The first word is *France*—the correspondent word is *Williams*—towards the close of the paper is the word *Paris*—the correspondent term to *Paris* is *this place*.

Now, when this letter to my lord Edward Fitzgerald informs him that, when the writer gets to *Williams*, he should hear from him, that he would be as active as he can, and when this paper informs you that *Williams* means *France*, and that *Paris* means *this place* (*Paris* can only mean *this place* when a person is using the words who is writing from *Paris*), is it possible, gentlemen, if these circumstances should be made out to your satisfaction, if it shall also be proved, as it will, if I am rightly instructed (I state only if I am rightly instructed, for I can only state to you the effect of evidence, as it is represented to me), if it shall be proved that Mr. O'Connor had the sort of connexion in this transaction of O'Coigly's which I have stated to you he had; if this letter proves to you that he was going to France; if the letter addressed to the Executive Directory proves, from the very contents of it, that it was to go to France: if I prove to you that Mr. O'Connor is corresponding with a man who is hiring boats in different parts of the county of Kent, to go to France; if I prove that he is not only corresponding with that man, but if I prove also, as I shall to demonstration, that he was corresponding in writing with Mr. O'Coigly, who had the address in his pocket-book; if all this shall be proved is it possible that any such case as this can be attempted in defence, namely, that although it is beyond dispute that some persons must be guilty in this case, yet that Mr. O'Connor cannot be connected with Mr. O'Coigly's intention? I say beyond dispute that some persons must be guilty, because, when I have proved the contents of the paper in that pocket book, and that it was Mr. O'Coigly's pocket-book, there can be no doubt of that fact; and that under these circumstances you ought to infer, that Mr. O'Connor was privy to the design of sending this paper to France, as well as the others who were acting with him, I take to be a proposition which I am fully warranted, by every principle of law, and rule of evidence, to submit to your consideration.

The contents of the baggage will be particularly stated to you; you will find colonel Morris's and captain Jones's military dresses, you will find in two boxes a considerable quantity of money, principally louis d'ors, part of it guineas, but to the amount in monies sterling of about 900*l.* or 1000*l.* Gentlemen, another question which you will have to address to your consciences is this, was this property of so little worth that it should be abandoned by these gentlemen, by one and all of them, unless they had been con-

acious that, together with that property, something else was to be found, the production of which, as theirs, was dangerous?

The contents too of the money box in particular will prove, as strongly as any thing, the connection between Mr. O'Coigly and Mr. O'Connor. In the first place I think I shall prove to you, that every shilling of that money, except about 97*l.* was Mr. O'Connor's. If I prove to you that it was all Mr. O'Connor's money but 97*l.*, who was to supply the 300 guineas that were to be deposited in the Canterbury bank? who was to supply the sum of money larger than that sum of 97*l.*, which was to be paid for the trip to the continent? But, besides the fact of their counting the money in the night, when they slept in the same room at Whitstable, unless I am misinstructed, I shall also prove this; indeed, as to this, I think I cannot be misinstructed, that, when the box was opened and the parcels were untied, in one of them was a sum of about 97 guineas, I think, together with a paper, on which was written these words, "this is captain Jones's money." Now I ask, if it be true that Mr. O'Connor and Mr. O'Coigly had not been acquainted with each other, how did it happen that there came into the money-box of Mr. O'Connor this sum of 97*l.*, together with a label, denoting that that sum of money was captain Jones's.

Gentlemen, I will now state to you shortly the contents of some of the other papers which were found upon some of these parties; though I should mention to you first, with a view that I may recite altogether the contents of the papers that were found, that the prisoner Binns had left his box behind him at Evans's, No. 14, in Plough-court, and that a person who knew Binns, saw him with the other prisoners brought to town, and feeling an anxiety about the contents of that box, removed it from Evans's, and kept it in his own custody, where it was traced and was found. In that box was found a paper which I shall produce to you, and the fact of its being there found connects Mr. Binns and Mr. O'Coigly very strongly, as well as many other circumstances in the case; there was found in that box a paper of no less consequence than the pass with which Mr. O'Coigly had been travelling in France, and in other parts of the continent, in the autumn of 1797. That pass will be identified beyond all doubt, because there is his own name upon it, in his own hand-writing, connecting him with the administration of the different countries through which he passed, Paris among the rest, he giving in his name in his own signature, where it stands upon that paper. This is not an immaterial circumstance, because, though it signifies not an iota; as it appears to me in this case, which particular individual was to be the bearer of this paper, yet you will see that it is very material to prove by this paper that O'Coigly had before been tra-

velling in France—the address to the Executive Directory, which I have read to you, stating expressly, "We send it by the person who was the bearer of our former paper."

There are two other papers which have more immediate reference to Mr. O'Coigly, in his hand-writing, which will also be produced to you; the one is a letter which he gave to Perkins, of the Bear and Key at Whitstable, to be put into the post-office at Dover, and the other is a letter which was found in his possession, and which I state to you as letters extremely mysterious in their contents, and which I apprehend, before we get to the close of this case, it will be incumbent upon him to explain. I will also show that Mr. O'Coigly has a connexion with a part of this country called Manchester, for that appears upon the face of these letters; I shall say a word or two more upon that subject presently. These letters are dated, the one the 14th of February, 1798, the other the 26th of February, 1798, and they will both be proved to be his hand-writing; that of the 14th, signed William Parkinson, is in the following words: "Manchester, February 14th, 1798. Sir: Notwithstanding the severe prohibition enforced by the French against our merchandize, I am resolved to carry on the trade at all events;"—perhaps, gentlemen, I may as well tell you at present, as at any other period, that it appears, from the papers found in Mr. O'Coigly's pocket, that his profession is that of a Roman Catholic priest:—"I am resolved to carry on the trade at all events; hence I send a confidential friend to arrange the necessary preliminaries with you, and take proper measures to elude the force of that law. If you judge it necessary that he should remain on your side the water, to assist in receiving the goods, be it so. You will procure him the passports or protections necessary in your country. Let me know, as soon as possible, whether we may venture to send goods into the French territories by land. I think it highly probable; if so, we shall have a great share of the trade to ourselves. Yours sincerely, William Parkinson." Addressed, "Mynheer George Frederick Vander Hoop, Speigle-street, Rotterdam."

The other letter is in these terms, it was written at Whitstable upon February the 26th, and delivered to the landlord: "Dear sir, happening by accident to be here, and hearing of a general embargo laid on all vessels in the Dutch ports, and a seizure of our merchandize there, I wish to be informed exactly by you, the more so as I am obliged to attend my duty,"—observe, he is a trader in the last letter,—as I am obliged to attend my duty as a military man at present, and my partner has a quantity of goods just ready to ship and consign to you; this will be sent over by a careful hand, and the sooner you answer it the better for both parties, because, if your answer should be favourable, we shall ship, perhaps, a treble quantity. Direct, in

all haste, to Parkinson and Company, High-street, Manchester. We are very uneasy about the safety of the last parcel we sent over; lose no time, I pray you; in the mean while I am your's, sincerely, Edward Wallace." His name is Parkinson in the other letter, Edward Wallace in this. The address of this letter is, "to Mynheer Van Solomon Straet Van Haelem, Amsterdam."

Gentlemen, I should have mentioned to you, which I now do in a word, for fear I should forget it, that a bargain had been made with a person of the name of Kerby, who will be called to you, to take all the baggage from Margate to Deal. I mention that as a circumstance of evidence, to show that it was the intention of the persons removing their baggage from Margate to Deal, to go abroad from Deal. Without entering particularly into the contents of all the other different papers which you will find were in the pockets of these respective persons, and which are in their contents extremely short, I think I may venture to state to you, that there is not one but which will afford important evidence of the truth of this case, from the beginning to the end of it, against these prisoners.

Gentlemen, I take leave to state again, under their lordships correction, that where persons are acting together in a conspiracy, when it is once satisfactorily proved that they have all been acting in some of the transactions which form the circumstances of that conspiracy, the act of each of them is evidence against all. I take it also to be perfectly clear, that if the evidence arising out of the acts of all of them, or the evidence arising out of the acts of each of them, as applied to all of them, shall make out the fact of the conspiracy against all as laid in the indictment, that it is your duty to find every one of them guilty. I take it also to be clear, that if it should, in the result, be your opinion that, with respect to any one or more of these prisoners, the guilt is not brought home to him or them, the innocence of any one or more of them is no reason why you should acquit the rest.

Gentlemen, it may be, and certainly must be the fact, that in this general opening I have omitted a great many circumstances material to be laid before you. In the course of giving the evidence, however, some short explanation will be offered, and such only as ought to be given, from this place I mean, of the contents of each and every paper which will be read in evidence before you. With respect to any circumstances, the detail of which I may have omitted, and particularly some circumstances which may be referable to the papers of Mr. O'Coigly, as proving him to have had a good deal of transaction at Manchester, I do not go through the particulars of them now, but I shall lay them before you in the order in which I think they will be most intelligible. When you have heard this evidence it will be your duty, the duty which

you are sworn to discharge, to make a true deliverance, according to the evidence, between the prisoners at the bar and the public. I am persuaded, gentlemen, that, speaking to you in a British court of justice, you would treat with horror and indignation any man who could venture to press for your verdict, if your consciences are not perfectly satisfied that the prisoners are guilty. On the other hand, it is incumbent upon me to put you in mind, that if you do owe a great duty to the prisoners, you owe also a great duty to the public. I question not but that you will discharge that duty satisfactorily to your consciences, to your country, and to your God.

EVIDENCE FOR THE CROWN.

John Revett sworn.—Examined by Mr. *Solicitor General*.

You are one of the officers belonging to Bow-street?—Yes.

Did you apprehend all the prisoners at the bar?—I did.

When?—On the 28th of February.

Where?—At the King's-head at Margate.

Who was with you when you apprehended them?—Fugion, and four light-horsemen went with us; there were some other people, but I do not know their names.

Whom did you apprehend first?—I first went into the parlour on the left-hand side; the King's-head is kept by one Mrs. Crickett. In the parlour on the left-hand side I found the prisoners Leary and Allen, and all the baggage which is now produced in Court, except one great-coat which has a black collar to it. Proceeding to go up stairs I met the prisoner Binns at the bottom of the stairs, I took him and put him into the parlour with the other two; then I proceeded up one pair stairs, and in a room almost facing the staircase I found the prisoner Quigley sitting with tea-things before him.

Was that a bed-room?—No, a sitting-room; I secured him, and I saw Fugion take a dagger out of his left-hand inside pocket; I searched him, and found several bits of paper in his pockets, which I afterwards marked; as soon as I had searched Quigley, Mr. O'Connor came into the room, I asked him, pray, sir, what is your name? or words to that effect; he refused to give me any name; he asked me who I was, and what I was; I told him I was an officer; he replied what officer; I said an officer of Bow-street. I searched Mr. O'Connor, there were no papers found upon him excepting a small piece of paper written with a pencil, which was in his purse, it was a memorandum of the name of a person at Deal.

Did you find any thing in the room in which you apprehended Quigley?—There was a great-coat upon a chair, on the left hand side as I went into the room. Quigley begged to know whether he might not have his breakfast? I told him yes; after he had breakfasted, he said he was ready, and got up, and put on

a blue spencer great-coat. I then took him down into the parlour below, where this luggage was; then I went up again, and staid some little time in the room, and then Mr. O'Connor came down with me into the parlour; whether he breakfasted in the room or not I cannot exactly say; I asked them whom the luggage belonged to.

Were they altogether in the parlour then?—Yes; the direction to some of them was colonel Morris; they refused to give any account; none of them would give any account of the luggage; they refused to own any of the luggage; I went up stairs, and in a bed-room there was a small cloak-bag; I asked Mr. O'Connor if it belonged to him; he would not own it; he said probably I might have put something into it; it was unbuckled as if something had been taken out.

What bed-room did you find that in?—A bed-room on the left-hand side of the staircase; I then looked into the sitting-room where Mr. O'Connor and Quigley had been, and found that dark great-coat with a black collar; I brought it down into the parlour where the five prisoners were; I asked if the great coat belonged to either of them, and particularly Mr. O'Connor and Quigley, they said no. I then took a pocket-book, and some other things out of the pocket; every thing that was in the great coat pocket was taken out and tied up in a handkerchief, and I put it into my side-pocket; we then took the prisoners away, and the luggage, to the hotel; after we had done so, Fugion, and a gentleman of the name of Twopeny went into another room, I undid the handkerchief, and Mr. Twopeny opened the pocket-book, and pulled a paper out of the pocket-book, this is the pocket-book [producing it].

Mr. Justice Buller.—Who was in the room at this time?—Twopeny, Fugion the officer, and myself.

Mr. Solicitor General.—Did you find any thing else?—There were some more papers in the pocket-book, I marked them all, and in the pocket-book there was a silver stock buckle.

Look at these papers?—This paper, No. 1, I marked at Bow-street; No. 2, 5, 6, 7, and 8, I marked at the Secretary of state's office.

Mr. Justice Buller.—Had they ever been out of your possession, from the time you took them, till you marked them?—No.

Did you find any stock?—In that black portmanteau that Mr. Fivey owned, when he got to Bow-street, there were some stocks.

Mr. Justice Buller.—You did not notice them till you got to Bow-street?—The things were not opened before.

Mr. Solicitor General.—Did you take any papers from the person of O'Coigly?—Yes, and which I marked also.

Look at these papers?—These are the papers; they are marked Fivey, No. 1; Fivey, No. 2; Fivey, No. 3; Fivey, No. 4; Fivey, No. 5; Fivey, No. 8; this I believe to be the

paper taken out of Mr. O'Connor's purse, Mr. Twopeny received it at Margate, I received it from him.

Mr. Justice Buller.—Then say nothing about that.

Mr. Solicitor General.—You gave the paper, when you took it out of the purse, to Mr. Twopeny?—Yes, I did.

What did you do with the prisoners?—We brought them to Bow-street.

Were the things examined there?—Yes; the things were all examined at Bow-street.

Were the mahogany boxes examined there?—No; all the boxes, excepting the mahogany boxes, were examined at Bow-street.

Where were the mahogany boxes examined?—At the Secretary of state's office; I was present when that small mahogany box, which was inside that green box, was opened, it contained a quantity of gold.

Had it been opened till you saw it there?—No: a smith was sent for who broke it open at the Secretary of state's office; the flat box was opened, but I was not present when it was opened.

Look at that paper [the cypher]; has it your name upon it?—It has; I was present when Fugion took it out of this razor case.

Was any thing else taken out of this little portmanteau that belonged to Mr. O'Connor?—There were some silk stockings taken out; Fugion can give a better account of that than I.

Is this the small mahogany box that you saw opened at the Secretary of state's office?—It is, I put my name upon it.

John Revett cross-examined by Mr. Plumer.

I understand you are a Bow-street runner?—Yes.

How long have you been in that sort of employment?—About three years.

What time in the morning was it when you arrested these people?—About nine or ten o'clock.

After you had taken the papers in the morning, did you at that place take any account of them?—I did not mark them there certainly.

Did you take any list or inventory of them?—I did not.

Did any body else in your presence?—No. Were they marked by you, or by any body else while you were at Margate?—They were not.

Were they sealed up by you or by any body else?—They were not.

Did you take them before any magistrate to have them examined by him, at Margate?—No.

Was there any magistrate at Margate?—I do not know.

Do you recollect being desired to send for a magistrate, and have the papers noted and inventoried at the time, in order that there might be no mistake about what papers there were?—Probably it might be so.

Was that before or after the great-coat was found?—After.

You say you first found Quigley in a room where there were some tea things?—Yes.

Then you went down with him leaving nobody in that room?—I left Mr. O'Connor there and two soldiers.

When you went down with Mr. Quigley you left Mr. O'Connor there and two soldiers?—Yes.

How long was it before you came back again?—Not more than five minutes, I suppose.

You went into another room you said then with Mr. O'Connor?—No; I went into a bed-room by myself.

That was before you returned into this room where the tea things were?—I believe it was.

When you found the great-coat, you said you took it down stairs, and asked them whether it belonged to them?—I did.

Had you at that time examined whether there was any thing in the great-coat pocket?—I had not.

Where was it that you first examined the great-coat?—In the parlour below.

Who was present when you first examined it?—The prisoners were all in the room, and Fugion.

Whom did you find in the room up stairs, where you found this great-coat, when you took the great-coat down stairs?—I do not think any body was in the room at that time I had seen it in the room.

But you had left the room, and when you came back into the room you found the door open and nobody then was in the room, but the great coat was lying upon the chair?—Just so.

This was a public inn at Margate?—Yes.

At ten o'clock in the morning?—Between nine and ten.

There were a great many people I believe in the house at that time?—There were soon after we went in.

Do you mean to say you took the papers out of the pocket-book in the presence of the prisoners?—No, they were not present.

Then you took a pocket-book out of the great-coat pocket, and other things?—Yes; I took the papers out, and tied them up in a handkerchief; there were no papers examined in the presence of the prisoners.

Did you keep the papers in your possession after they were taken out of the great-coat pocket?—I put them in my inside pocket.

You did not examine any of them?—Yes, one that Mr. Twopeny showed me.

You did not examine them in the presence of the prisoners?—No.

Who were present when you examined them?—Twopeny, Fugion, and myself.

What is Mr. Twopeny?—An attorney, I believe, at Rochester.

I desire you will recollect yourself a little; when you got into that room and examined these things by yourselves, was not that paper separate from the pocket-book?—No.

Recollect yourself, and say whether you can be quite clear upon that subject?—I can; the paper was not in the pocket of the pocket-book, but in the middle of the pocket-book, in this manner (describing it) with some more papers.

Did you read this paper that day?—Mr. Twopeny read it; I did not.

Did you hear it read?—I heard part of it read. When was the first time that you marked any of the papers?—The first paper I marked was when I arrived at Bow-street.

What day was that?—Upon the first of March, I think.

Are you quite sure as to the day you marked them?—Yes, I am.

What time of the day?—Four o'clock in the afternoon.

I believe you will recollect, that before the papers were marked, some of them were missing for sometime at Bow-street, and there was an enquiry about them, and a search after them?—I do not recollect such a circumstance.

In whose possession were those papers from the time they were taken at Margate till they were marked at Bow-street?—The next day, the second, they were sent down to the privy council.

Did the papers all of them remain in your possession?—Yes; all of them remained in my possession till I had marked them all.

Where did you keep them?—I took them home with me that afternoon, and the next morning they were marked.

Where did you put them?—In my drawer at home, where I keep papers?

Was it locked?—Yes.

All the time?—Yes, till the next morning; I always keep my papers locked.

Do you remember whether it was locked or not?—Yes, it was.

Had you read or examined any of the papers so as to be able to swear to the contents of any one before that time?—No; I had not.

Do you recollect your being desired to seal up the luggage?—Yes, I was desired by the prisoners.

At Margate?—Yes.

That was not done, I believe?—It was not.

John Revett cross-examined by Mr. Dallas.

You arrested Mr. Binns upon the stair case?—He was by the foot of the stairs.

You were the person who arrested him?—I and Fugion.

Was Fugion with you at that time?—He was.

Was that before or after the arrest of the other persons?—I arrested Binns before Mr. O'Connor and Fivie were arrested; Leary and Allen were below stairs arrested first.

Mr. *Solicitor General*.—Did you see the great coat when you first went into the room?—Yes.

Mr. *Fergusson*.—Did you search Allen?—No, I did not.

Mr. Solicitor General.—Was the paper you marked at Bow-street, marked before or after you put it into your drawer?—Before I put it into my drawer.

Edward Fugion sworn.—Examined by Mr. Garrow.

I believe you are one of the constables attending the public office in Bow-street?—Yes.

Did you assist the first witness in apprehending the prisoners?—Yes.

State under what circumstances they were apprehended?—On the 28th of February we went to Margate; we went to Mrs. Crickett's at the sign of the King's-head, in High-street; when we went into the house, Leary and Allen were in the parlour on the left hand.

Those were the first you saw?—Yes; Binns we met coming down stairs; we went to Mrs. Crickett and asked her—

Do not tell us any thing that was said to you, excepting in the presence of some of the prisoners.—We went up stairs; the prisoner, Quigley, was in a room sitting down to breakfast.

Was any body else in the room at that time?—I do not recollect that there was; I laid hold of Quigley, and searched him, and pulled out this dagger (producing it) from his left-hand coat pocket.

Was it in that sheath?—Yes; leaving him in custody of Revett and the light horsemen, I went down stairs into the parlour to the other three prisoners; I believe I searched Binns before I went up, I found some papers and a pair of pistols in his pocket.

Were they loaded then?—I believe they were, but am not positive.

What is the book you have in your hand?—I found this in Binns's pocket; I marked it Binns, E. F.

Look at this paper; where did you find that?—In Binns's pocket; I marked that likewise Binns, E. F.

You went up stairs?—Yes, and came down again; I asked the three prisoners, that were in the parlour, Binns, Leary, and Allen, whose was all that luggage; they would not make any answer about it, or tell their names.

Did they refuse, or did they only not say any thing? They said they should not say any thing, or should not answer any questions; then Revett brought Mr. O'Connor down stairs; we got a cart and put the luggage in, and took them and the luggage to the hotel in Margate.

Before you took them to the hotel, did you see any thing of a great coat?—I saw a great coat up stairs, in the room where Quigley was sitting, when I first went up stairs.

Where did you see that great coat, after you had secured the prisoners?—I saw it when Revett brought it down stairs with him, when he came down with Mr. O'Connor.

By this time all the prisoners were assembled

there together?—Yes; they were asked whom the great coat belonged to? nobody made any answer.

Did they make any answer, or remain silent?—I believe they remained silent?

Did you see any thing taken from the great coat?—I saw a pocket-book.

Should you know that pocket-book again? Is this it? [showing a pocket-book to the witness].—I did not mark it; it was a pocket-book of that appearance; I believe that to be it.

Who took that pocket-book out?—Revett did; and tied that and some other things he took out up in a handkerchief, and put it in his side pocket, we then took the prisoners to the hotel at Margate.

Did you afterwards see Revett produce that handkerchief, with the contents, to any body?—Yes, to Mr. Twopeny.

Did you see the handkerchief opened?—I did.

Did you see anybody take any paper from it and read it?—Mr. Twopeny did.

Did you see him take that paper out of the pocket-book, which you had seen Revett take out of the great coat pocket?—I did.

Did you hear Mr. Twopeny read it?—I did; and read it myself afterwards.

What was done with it after it had been so read?—It was returned to Revett again, and put into the same pocket-book, and delivered into Revett's care.

When did you next see that pocket-book and the paper again?—The next day, Thursday, March the 1st, at Bow-street.

Did you mark that paper?—I did.

Can you take upon yourself to say that the paper which you marked at Bow-street, and which you saw in Twopeny's hand and read, was the same you saw taken out of the pocket-book, at Margate?—I am positive of it; this is the paper. [the Address to the Executive Directory of France].

Look at these two papers?—Those two papers I found upon Binns, in his coat pocket, at Mrs. Crickett's, at Margate.

Mr. Justice Buller.—What are they?

Mr. Garrow.—One is a map of the county of Kent; the other appears to be a cypher; the word "Claris," bookseller, Canterbury, at the bottom, will identify it. After you had secured the prisoners and the luggage in this manner, what did you do with them?—We brought them to Canterbury, where we stopped all night; the next morning we proceeded to London, and went to Bow-street.

Did you keep all these things in your custody till you had marked them?—Yes.

Did you see the paper, which I have shown you, which has your mark upon it, at Bow-street?—Yes, I did.

Did you then mark it?—I did.

Were you present afterwards when any of the luggage which had been found at Margate was opened at the Duke of Portland's office?—I was present when that small mahogany box was opened.

Was it broken open?—It was.

Are you sure that was part of the luggage you found at Margate?—Yes, I am.

Where did you find it?—In the lower parlour on the left hand where I found the two first prisoners.

Did you see any razor case opened at the duke of Portland's office?—I did not.

Did you mark any paper?—Yes, that paper which I found in the razor case afterwards.

Where had this razor case been found?—I took it out of the cloak bag.

Where did you find the cloak bag at Margate?—I did not find it.

Did you see it found?—I did not.

Have you since taken any articles of wearing apparel out of this?—Yes, I took some silk stockings out, which I took to the Tower, to Mr. O'Connor.

Did you see Mr. O'Connor?—I did.

Did he receive those silk stockings?—He did.

By whose desire did you take those silk stockings out of this portmanteau?—I had an order to send him some things; I believe there had been some things taken out before.

Mr. Justice *Buller*.—Who told you to take out those stockings?—I had an order from the duke of Portland to take Mr. O'Connor some silk stockings and linen, and things; I went to the governor, he introduced me to Mr. O'Connor with the things, and I received a receipt I think from him.

Mr. Justice *Buller*.—Did you tell him whom you came from?—Yes; I told him I had brought the things he had written for; he received them, and gave me a receipt for them.

Mr. *Garrow*.—Look at that great coat; is that the coat you saw when you first went into the room at Margate where Mr. Fivewas?—I saw a coat, but do not know what the colour was.

Is that gentleman the person you have been speaking of as Mr. O'Connor?—Yes.

Do you see the person there whom you have called by the name of Quigley?—Yes.

Look at the other persons, Binns, Leary, and Allen. Those are the persons I have been speaking of.

Edward Fugion cross-examined by Mr. *Dallas*.

What hour was it when you went to the King's-head?—About eight in the morning.

Who was with you at that time?—Revett, two or three light horse-men, a quarter-master of light horse, a custom-house officer, Mr. Sanderson, and another person or two.

All these persons went with you to the King's-head?—They did.

Who went into the house besides you and Revett?—We took Mr. Sanderson in with us, I think, to identify the persons he had seen.

Recollect whether any other persons went into the house with you and Revett besides

Mr. Sanderson.—Yes, several of the light horse went in, and a quarter-master of light horse.

Do you know the name of that quarter-master?—No.

Or the names of the light horse men?—No, I do not.

When you went into the house you went into the parlour on the left hand, where you found Leary and Allen?—We did.

Did you go alone into that room, or who went with you?—There certainly were several persons went with me.

Was Revett one of the persons who went with you into that room?—I believe he was.

Will you take upon yourself to swear it?—I cannot.

Endeavour to recollect whether you can or cannot?—I really believe that he did, but I cannot positively swear it.

Who was present when you searched Leary and Allen?—Several people were present.

Was Revett present at that time?—I believe he went up stairs while I searched Leary and Allen.

If you are not positive that he was in the room at all, how can you be certain that he went out of the room when you searched these two men?—I cannot be certain, I think that was the possibility of the case, I really think he was in.

How long have you been an officer in Bowstreet?—About nine years.

Do not you know you must speak to facts?—Certainly, as far as I know.

Not knowing whether he was in the room or not, you now believe he went up stairs when you searched Leary and Allen?—We both together met Binns upon the stairs.

How long might that be after you first entered the room where Allen and Leary were?—Three or four minutes.

Then you met Binns upon the stairs?—Yes, coming down stairs.

Who searched Leary?—I think I did; I am sure I searched him.

What did you find upon him?—Some money, and a handkerchief in his pocket, and some gloves.

That was all?—I believe it was.

What did you find upon Allen?—Some money.

And that was all?—Yes, except a pocket handkerchief.

When you arrested Binns was Binns on the stairs or at the bottom of the stairs?—At the bottom of the stairs.

Did Binns make any resistance?—He did not.

I think you have told us he had pistols in his pocket, but did not make any resistance when you stopped him at the bottom of the stairs?—He did not.

What did he say to you?—I cannot recollect the conversation now.

Did not he ask you by what authority you stopped him there?—He did.

And you told him you were an officer from Bow-street?—I did.

When you arrested Binns at the bottom of the stairs, who were left in the room where Allen and Leary were?—One or two light-borne men.

When you searched Binns you found several papers that have been produced, in his possession?—I did.

What did you do with those papers when you took them out of his pocket?—I tied them up in a handkerchief, I believe, belonging to him.

What was done with Binns?—We left him in custody in the parlour.

Did you, while you continued in the King's-head, put a mark upon any one of these papers?—I did not.

While you continued in the King's-head, did this handkerchief remain in your possession?—It did.

Was it ever opened to put in any article belonging to any one of the other persons now upon trial?—Yes, all the money I took from the other prisoners was put into the same handkerchief.

When you first went into the room where Mr. O'Coigly was, you saw a great coat?—Yes.

But whether this is the great coat you are not able to swear; now are you able to swear to this fact—after you had arrested Mr. O'Coigly in the room up one pair of stairs, in whose charge and custody was Mr. O'Coigly left?—I did not go into the bed room; as soon as I had searched Mr. O'Coigly and taken that dagger from him, I came down stairs to see after the other prisoners.

Who was left in the room with him?—I left Revett.

From the time Mr. O'Coigly was arrested, was he suffered to quit the room in which he was arrested?—He was arrested up stairs.

Was he in the bed-room where the great coat was?—He was not in the bed-room.

When the great coat was shown to you by Revett, was it in the room in which you first saw it?—He did not show it me there, it was brought by him down stairs.

Then whether the great coat you saw in the room below was the same great coat you had seen up stairs you cannot tell?—No.

From the King's-head you went to the hotel?—We did.

While you were at the King's-head, or at the hotel, were you not desired to send for a magistrate, in order that the papers might be marked and sealed up?—I do not think I was.

Will you swear that you were not?—I do not think I heard a magistrate's name mentioned.

Will you swear that you were not desired to send for a magistrate, to mark the papers before that magistrate, and have them sealed up?—I was asked whether Mr. Twopeny was a magistrate; I said he was a magistrate, and

he was a proper person; I never heard any other magistrate's name mentioned.

Were you or not desired to send for a magistrate in order that the papers might be marked and sealed up at the time?—I do not think I was.

Will you swear you were not?—I will not.

Will you swear Revett was not desired to do it in your presence?—I cannot swear that.

Who were present when the papers were afterwards opened at the hotel at Margate?—Mr. Twopeny, myself, and Revett.

Then this handkerchief that had been tied up was opened at the hotel, when all the prisoners were absent?—It was.

Where were they at the time?—In the assembly room.

In what room where you when the papers were opened?—I think a front parlour.

The papers were not marked when they were seized, nor when the handkerchief was opened at the hotel?—They were not.

In whose custody did the handkerchief continue till you got to London?—In Revett's.

Because I understood you to say in answer to a question from my friend Mr. Garrow, that the papers continued in your custody and Revett's till you got to London?—The luggage.

Then you had not the custody of the handkerchief, but it continued in Revett's custody?—Yes.

Upon your arrival in Bow-street was not this handkerchief lost or missing for some time?—It was not.

Did you hear nothing said by any person about this handkerchief being missing?—No.

That you swear positively?—I do; that was another handkerchief which had the papers of Binns in it.

There was a complaint of some handkerchief being missing, in which you had papers of Binns?—I made the complaint myself.

Then in how many handkerchiefs were these papers tied up when you left Margate for London?—Two handkerchiefs.

One of these handkerchiefs you say was in the custody of Revett; was the other in your custody?—It was.

When you arrived at Bow-street, the handkerchief in your custody was not to be found for some time?—It was not.

What had become of it?—In getting out there was a great mob round the door, my wife was there, it was handed out by some person, and they thought it was mine, and gave it my wife, and it was five or ten minutes before the handkerchief was found.

When the handkerchief was missing, did not the magistrate direct all the prisoners to be searched to see if they had it?—I did not hear any such order.

Nor see it done?—I did not.

Edward Fugion cross-examined by Mr. Gurney.

You were asked for your authority, and you

told them you were a Bow-street officer, and that you intended to take them to Bow-street, or to the Secretary of state's?—I did.

Did they not say they should answer no questions till they came before a proper authority?—They did.

Edward Fugion cross-examined by *Mr. Ferguson*.

You searched Allen?—Yes.

Did you find any papers upon him?—No; I found some money.

How much?—About fifteen guineas: I returned it to him again.

At Canterbury, where did the prisoners lie?

—All in the same room, upon a mattress in the parlour.

All in the same room?—Yes.

And was the luggage there?—Yes, in the same room.

Was there any person in the room during the night?—Yes, there was a soldier relieved every two hours.

And were you there during the whole night?—Yes.

And never left the room?—I did at intervals in the beginning of the evening.

Were you and Revett ever out of the room at the same time?—I do not think we were.

Edward Fugion cross-examined by *Mr. Scott*.

After you had taken the gentlemen from the King's-head at Margate to the hotel, do you remember Leary going out into the garden?—Yes, I do.

Relate what passed in the garden between you and him?—It is impossible to recollect.

Mr. Justice Buller.—It is improper for two counsel for the same prisoner to examine a witness.

Mr. Dallas.—When you went into the garden with him, did you make use of any threat?—No.

Did not you threaten to knock him down if he did not tell all he knew?—No; we had some altercation about going to the vault, he wanted to go with me, I said he was an impudent little fellow, that was all.

Mr. William Twopeny sworn.—Examined by *Mr. Adam*.

You are an attorney at Rochester?—I am. You were at Margate upon the 28th of February?—I was.

Did you see the prisoners there?—I did.

What did you do when you first went to Margate? you went to the King's-head?—I did.

What did you do at the King's-head?—I did not go to the King's-head till after they were in custody.

Did you see them in custody in the parlour at the King's-head?—I did.

Do you remember a great coat being brought down?—I do.

Did any conversation pass?—They were se-

verally asked which of them it belonged to, they all denied its belonging to either of them.

Did they say any thing about the baggage which was in the parlour?—They denied that also.

Did you see Mrs. Crickett, the mistress of the house, there?—Yes.

In the presence of the prisoners?—Yes, I desired they might be brought.

What did she say with respect to the baggage of the prisoners?—She said the baggage came with them, I wanted her to discriminate which baggage belonged to each, she could not.

This was in the presence of the prisoners?—Yes.

Was the great coat particularly asked about?—It was, she said that likewise came with them.

Were you present when any thing was taken out of the pocket?—I think they were in the act of taking them out at the moment.

Where did you go to from the King's head?—To Benson's hotel.

When you were at Benson's hotel, did Mr. Revett take the handkerchief out of his pocket?—He did, from whence he had put it.

What did you find in that handkerchief?—A pocket book.

Did you open that pocket-book?—I did.

Look at that pocket book, is that the pocket book?—It is.

Look at that paper, did you find that paper in the pocket book?—I did.

Did you read it at the time?—I did several times, I read it first to myself, in order to know what the contents were, and upon discovering what the contents were, I then read it to them.

In what manner did you find it in the pocket book?—There was some writing paper in the pocket book, and this was in the writing paper, the top of the writing paper was pressed down like a sheet of paper folded together, and the upper part was rather bent over, so as to contain this paper within: so that if I had taken that paper out by itself, this would not have appeared.

Was it blank paper?—It was, at least I did not see any writing upon it; this was in one of the folds of it, not directly in the middle, this part was bent over it, so that it was confined.

You are quite sure this is the same paper?—Yes, I am.

Did you receive this paper from Revett? [showing him a paper with the address of Hayman of Deal?—Yes; he took it out of the purse, and I took it from him, I took it out for the purpose of identifying the men, for I could not find any body at Margate that knew the men.

Did you give back to Revett that paper which you saw him take out of the purse?—Yes, the same paper.

Did you hear any question put to the pri-

soners as to their names?—The prisoners were asked as to their names; they refused to tell their names; I desired they would not puzzle them any more about asking them their names.

Were any more questions asked them?—No.

Did you accompany them to London?—Yes, I never parted from them after.

Did you see the paper (*the address*) produced at Bow-street?—Yes, and saw it marked.

Was that the same paper you read at Margate?—Yes, it had never been away from us; I would not open any thing there.

Is there any magistrate residing at Margate?—There is none, I enquired particularly if there was.

Mr. William Twopeny cross-examined by **Mr. Plumer.**

I understand you to have said that you did not go with these Bow-street officers at first, you came after these people were arrested?—No; it was in consequence of an arrangement made, that I did not go with them.

But the fact was you did not go?—No, not inside, I was outside.

What room did they first go into, when they came into the King's-head?—A parlour below stairs.

At that time had they got the great coat below stairs?—Yes, I never went any farther into the house.

In whose possession was it when you first saw it?—Revett's.

Below stairs?—Yes.

Was any thing taken out of it in the presence of the prisoners?—I think the things were then taking out in the instant in the parlour.

When the prisoners were present?—The prisoners were then present; they were then, I think, either in the act of taking them out, or had just taken them out.

But you saw them taken out of the great coat pocket, in the parlour below stairs, in the presence of the prisoners?—Yes.

That you are positive of, are you?—In the way I state it, I am certain of it.

You are positive that that pocket book in particular was produced in the parlour below stairs, when the prisoners were present?—Yes, and the things were put into the handkerchief upon the table.

Do not let me misunderstand you; you are positive you saw in the parlour below stairs, that black pocket book, either in the act of being taken out of the great coat pocket, or in the act of being produced there, while the prisoners were present?—Yes, and put by Revett into his coat pocket.

Whilst the prisoners were present?—Yes, it was in the parlour while I was present, I was no where else, and could not see it any where else.

You are quite clear about that?—I cannot conceive that I am mistaken about it.

Did you go with these two persons, Revett and Fugion, into any other room?—Not in that house.

Did you go into a room with them, when nobody else was present, at any other house?—At Benson's hotel.

The things were not taken out of the coat at Benson's hotel, were they?—No.

You are positive nothing was taken out of the great coat pocket at Benson's hotel?—I cannot say that nothing was, but that was not, for it was carried by Revett in his coat pocket from the King's-head to Benson's hotel.

And you are positive they were taken out before you three got into that room at the hotel?—Yes, because they were tied up in a handkerchief, at the King's-head.

Mr. William Twopeny re-examined by **Mr. Adam.**

The pocket-book was taken out of the great coat pocket at the King's-head, and tied up in a handkerchief?—Yes.

Was the pocket-book opened at the King's-head?—Not to my knowledge, and I do not think it likely that it should.

What was your reason for not going into the house?—I had learned——

Mr. Plumer.—We do not want your reasons.

Mr. Adam.—You did not go into the house?—I did not.

[The paper read.]

"The Secret Committee of England to the Executive Directory of France.

"Health and Fraternity!

"Citizen Directors;—We are called together, on the wing of the moment, to communicate to you our sentiments; the citizen who now presents them to you, and who was the bearer of them before, having but a few hours to remain in town, expect not a laboured address from us, but plainness is the great characteristic of republicans.

"Affairs are now drawing to a great and awful crisis; tyranny, shaken to its basis, seems about to be buried in its own ruins. With the tyranny of England that of all Europe must fall. Haste then, great nation! pour forth thy gigantic force! Let the base despot feel thine avenging stroke, and let one oppressed nation carol forth the praises of France at the altar of liberty.

"We saw with rapture your proclamations, they met our warmest wishes, and removed doubts from the minds of millions. Go on! Englishmen will be ready to second your efforts.

"The system of borrowing, which has hitherto enabled our tyrants to disturb the peace of a whole world, is at an end; they have tried to raise a kind of forced loan—it has failed! Every tax diminishes that revenue it was intended to augment, and the voluntary

contributions produce almost nothing. The aristocracy pay their taxes under that mask; the poor workmen in large manufactories have been forced to contribute under the threat of being turned out of employ; even the army have been called upon to give a portion of their pay to carry on the war—by far the greatest part have peremptorily refused to contribute to so base a purpose, and the few that have complied have in general been cajoled, or reluctantly compelled to it.

“Englishmen are no longer blind to their most sacred claims; no longer are they the dupes of an imaginary constitution; every day they see themselves bereft of some part of the poor fragment of democracy they have hitherto enjoyed, and they find, that, in order to possess a constitution, they must *make one*.

“Parliamentary declaimers have been the bane of our freedom. National plunder was the object of every faction, and it was the interest of each to keep the people in the dark; but the delusion is past! the government has pulled off its disguise, and the very men who, under the semblance of *moderate reform*, only wished to climb into power, are now glad to fall into the ranks of the people. Yes, they have fallen into the ranks, and there they must for ever remain, for Englishmen can never place confidence in them.

“Already have the English fraternized with the Irish and Scotch, and a delegate from each now sits with us. The sacred flame of liberty is rekindled, the holy obligation of brotherhood is received with enthusiasm; even in the fleets and the armies it makes some progress—disaffection prevails in both, and united Britain burns to break her chains.

“Fortunately we have no leader; avarice and cowardice have pervaded the rich, but we are not therefore the less united. Some few of the opulent have indeed, by speeches, professed themselves the friends of democracy, but they have not acted, they have considered themselves as distinct from the people, and the people will, in its turn, consider their claims to its favour as unjust and frivolous. They wish, perhaps, to place us in the front of the battle, that, unsupported by the wealth they enjoy, we may perish when they may hope to rise upon our ruin. But let them be told, though we may fall through their criminal neglect, they can never hope to rule, and that Englishmen, once free, will not submit to a few political impostors.

“United as we are, we now only wait with impatience to see the hero of Italy, and the brave veterans of the great nation. Myriads will hail their arrival with shouts of joy; they will soon finish the glorious campaign! Tyranny will vanish from the face of the earth, and, crowned with laurel, the invincible army of France will return to its native country, there long to well earn't praise of a

grateful world; whose freedom they have purchased with their blood.

“6th Pluviöse, A. R. P. G. 6.” “L. S.”

Ann Crickett sworn.—Examined by Mr. *Attorney General*

Where do you live?—At Margate.

Do you remember any persons coming to your house on Tuesday the 27th of February last?—Yes.

What number of persons came to your house any time in that afternoon?—At first three.

Did the three persons who came to your house appear to be all gentlemen, or what?—I looked upon them to be two servants and one gentleman.

That was your judgment upon their appearance?—It was.

Did any baggage come with them?—Yes.

How did that baggage come?—It was brought in a cart.

Do you recollect who the carter was that brought it?—One Thomsett.

Do you know where they came from?—No.

Did any other persons come afterwards that evening to your house?—Yes, about a quarter of an hour afterwards.

How many persons came then?—Two.

Were they, from their appearance, gentlemen or servants, or how?—As gentlemen.

Are any of the prisoners at the bar any of those persons?—Yes, the three in front, Mr. O'Connor, Binns, and O'Coigly, and the other two are behind.

Was this baggage taken out of the cart in which it came?—It was.

Where was it put?—In a parlour in the front of the street.

Do you remember the gentleman who came in first sending for any person?—Yes, the person next me (O'Coigly) desired a hair-dresser to be sent for.

Did any body stay in the room in which the baggage was put?—Yes, the two servants stayed in the room with the baggage below stairs.

When the other two gentlemen came that afternoon, did they make any inquiry for any body at your house?—Yes.

Do you recollect which of them made the inquiry, and what was the question he asked?—One of them asked for Mr. Jones; I carried the message to Mr. O'Coigly, and he answered to that name, and that he would wait upon them as soon as he was dressed.

Did he go up stairs to wait upon them?—He did.

Did he make any request, or express any desire to you, about the servants or the baggage, as he was going up stairs?—He desired his servants to take care of his baggage.

Did the three gentlemen spend the evening together in your house?—Yes, they did.

Do you recollect about what time they went to bed?—About ten o'clock.

* Sic in original.

Did they appear as if they were fatigued, as if they had been taking any considerable exercise?—I did not take any particular notice when they first came in.

They slept at your house that night?—Yes.

Had you any other guests that night?—No other strangers in the House.

Did any other strangers come in as guests before these persons were apprehended the next morning?—Nobody else but the town's people.

Did any body else that had baggage come in, besides these three gentlemen and their two servants, till they were apprehended?—None else.

Describe the rooms in which they slept?—They were all on the same floor with the dining-room.

Where did the servants sleep?—Up another pair of stairs, in one room.

Who slept in the room on the left hand of the dining-room?—I do not know.

Had the two gentlemen, who came last in the afternoon, any baggage with them?—No.

Just look at that great coat, does it belong to any of your family, or any body else that you know any thing of?—It is not my property, nor the property of any body that I know.

Jane Dexter sworn.—Examined by Mr. Solicitor General.

You are sister to Mrs. Crickett?—Yes.

You live with her?—Yes.

Do you remember any gentlemen coming into your house on Tuesday the 27th of February?—Yes.

Were you there when they came in?—No.

Did you find them there upon your coming into the house?—Yes.

When was that?—About three or four o'clock in the afternoon.

What persons did you find when you came to the house in the afternoon?—I found three gentlemen up stairs, and two below.

Were the prisoners any of the persons that you found there?—Yes.

Which were the three gentlemen?—The first three that stand in the front row (Mr. O'Connor, Binns, and O'Coigly).

Where did you find them?—Up stairs in the dining-room.

Where were the two others?—In the front parlour with the baggage.

Did you wait upon the three gentlemen?—I did.

At what time did they go to bed?—I believe it was at about ten o'clock.

Did they appear to be fatigued?—Yes.

Do you know in what rooms they slept?—Yes, in No. 6, No. 7, and No. 10.

How are those rooms situate with respect to the dining-room?—The dining-room was No. 9.

Which was the room Mr. O'Connor slept in?—I cannot tell which room he slept in; Mr. O'Coigly slept in No. 6, but where the other two slept I cannot tell.

Was any thing said to you about the baggage?—No.

Had you any other guests in the house that night?—None.

Was any thing said by the servants about the baggage?—I did not hear any thing.

What time did they get up in the morning?—I cannot recollect.

Did you prepare breakfast for them?—Yes.

At what time?—At about nine, as near as I can guess.

In what room did you prepare the breakfast?—No. 9, the dining-room.

Whom did you see when you went in with the breakfast?—None but this last gentleman (O'Coigly).

How long was that before they were arrested?—Just before.

Had you any conversation with that gentleman?—He said he should like to take a house, for about a month, for lodgings, that was all? at the same time they came in and took him.

Where did he wish to take a lodging?—In any part of the town of Margate, he did not mention where.

You did not see any luggage that belonged to any other persons?—No.

You had no other guests in the house?—No, nobody.

Do you remember seeing a great-coat with a black-collar?—No, I do not.

Did that belong to any of the family?—No.

Did you see it when the officer came in?—I did not.

William Kerby sworn.—Examined by Mr. Garrow.

I believe you are a stable-keeper at Margate?—I am.

Do you know the witness, Ann Crickett?—Yes.

Did you go, in consequence of any application that was made to you, upon Tuesday, the 27th of February, to the King's-head at Margate?—Yes.

Did you see there any person whom you now see in Court?—Yes, I saw that gentleman (Leary), and that other man (Allen), at the King's-head.

In what part of the house did you see them, and was there any thing in the room?—Yes, there was some luggage in the room.

Did it resemble this lying on the table?—Yes.

What passed between you and these two persons when you went there?—I agreed to take the luggage to Deal in a cart.

Which of the two persons spoke to you?—Leary.

Did he speak to you in the presence of Allen?—Yes, I said I would take them to Deal in my cart next morning. I asked eleven shillings to go to Deal, Leary said he would go up stairs and speak to his master, and if he approved of it they would have the cart at seven o'clock.

Did he leave you for that purpose, and afterwards return to you?—Yes, when he came back he said his master had no objection to the price, he would give the price, but could not get away by seven in the morning; he agreed to go at twelve o'clock, he said he could not get his business done to go before twelve.

Did you agree to go at that time?—I did.

Was any thing said upon the subject of any persons accompanying the cart?—Yes; Leary and Allen were to walk along side of the cart, and they said they would take a bit of breakfast on the road.

You went away and saw no more of them till after they were apprehended, I believe?—Yes; I saw Allen next morning as I rode up the High-street, he desired me not to fail being there at twelve o'clock.

At what time was it you saw him in high-street?—I saw him at the King's-head door; he desired me not to fail being there at twelve, and they would be ready.

Before twelve arrived they were in custody?—Yes.

Are you quite certain these are the two persons with whom you had this conversation?—Yes.

William Kerby cross-examined by Mr. Dallas.

Leary said he would go up and ask his master?—Yes.

He then went up and came down again, and said he would be ready to go at twelve?—Yes.

Next day you were to be, at twelve o'clock, in what street?—In the High-street.

You were to take the baggage away from thence at twelve o'clock at noon?—Yes.

Mr. Attorney General.—I am going to produce Numbers 5, 6, and 7, which purport to be papers of ordination of Mr. O'Coigly as a priest.

[They were read]

"Universis et singulis quorum intersit, Infrascriptus attestor, Fidemque facio, harum latorum Magistrum Jacobum O'Coigly hujus Parochie Alumnum, Juvenem esse optimis Moribus imbutum, piis Catholicisque Parentibus et Thoro legitimo natum, riteque baptizatum a R. D. Eugenio Laverty (Suscipientibus eum Jacobo Marlay et Joanna O'Donnelly) uno ex Predecessoribus meis, die octava Mensis Augusti et Anni Millesimi septingentissimi sexagesimi primi, necnon ab Illustrissimo ac Reverendissimo, D. D. Thomâ Froy Episcopo Ossoriensi confirmatum; in quorum Fidem hisce subscripsi, hac Die Decembris 12, 1784.

"DUDLEUS DEOLIN.

"PAROCUS DE KILLMORE."

"Richardus Miseratione divinâ et S. Sedis Apostolicæ Gratiâ Epûs Oropensis nec non Primatialis et Metropolitana Ecclesie Armachane Coadjutor, et Administrator.

"Universis et singulis præsentibus nostras visuris, lecturis pariter et auditoris, notum facimus et attestamus, Nos Dungannonie Diebus 31 Decembris, 1 et 2 Januarii Annorum 1784, et 1785, nempe Festis S. Silvestri P. A. Confessoris, Circumcisionis Domini nostri Jesu Christi, et Dominica immediate insequenti in Ecclesiâ parochiali S. Annæ, Missas in Pontificalibus celebrantes, dilectum Nobis in Christo Filium Jacobum O'Coigly, hujus Archi Diocesis Armachanæ Alumnum, juxta et secundum S. R. E. Ritum Morem et Consuetudinem, in Vim Privilegiorum Apostolicorum ad primam Tonsuram et quatuor minores Ordines necnon ad tres sacros, nempe Subdiaconatus, Diaconatus, et Presbyteratus, præviis Exercitiis Spiritualibus rite ac recte servatis servandis, in Domino promovisse, et ordinasse—In quorum omnium et singulorum Fidem has præsentibus Literas a Nobis et a Secretario nostro subscriptas, Sigilloque nostro parvo munitas fieri jussimus.

(L. S.) "RICHARDUS EPÛS. OROPENSIS

COADJUTOR ET ADMÖR. ARMACHANUS.

"MATTHEUS WHITE, Secr."

Datum Pontane, Die 30, Martii 1785.

"Richardus Miseratione divinâ, et S. Sedis Apostolicæ Gratiâ Epûs Oropensis, necnon Primatialis et Metropolitana Ecclesie Armachanæ Coadjutor et Administrator.

"Universis et Singulis Præsentibus nostras visuris, lecturis pariter, et auditoris, notum facimus et attestamus Reverendum Dominum Jacobum Coigly Diocesis Armachanæ, Presbyterum Morum Probitate, Vitæque Integritate esse commendabilem, nulloque excommunicationis, suspensionis interdicti vel Irregularitatis Vinculo innodatum. Quapropter eum Studiorum, et Pietatis Causâ in Catholicas Regiones proficiscentem, Episcopis Catholicis, eorumque Vicariis generalibus vehementer in Domino commendamus, quatenus illum benigne suscipiant, et ad Missæ Sacrificium celebrandum admittant. Insuper prædictum R. Dominum Jacobum O'Coigly magnopere commendatum volumus Collegiorum nostrorum Moderatoribus, præsertim vero reverendo Admodum Domino Charolo O'Neil Collegii Longobardorum Parisiensis Præsidi Spectatissimo, ut illum in Seminarium suum excipiat, ut sub ipsius vigili Curâ sacris Disciplinis sedulam Operam navans, idoneus tandem confecto Studiorum Curriculo, hujus Dominicæ Vineâ Operarius evadat. In quorum omnium et singulorum Fidem has præsentibus Literas a Nobis, et a Secretario nostro subscriptas, Sigilloque nostro parvo munitas fieri jussimus.

"RICHARDUS EPÛS. OROPENSIS

COADJUTOR ET ADMÖR. ARMACHANUS.

"MATTHEUS WHITE, Secr."

Datum Pontane, Die 30, Martii 1785.

Mr. Frederick Dutton sworn.—Examined by Mr. Garrow.

Are you acquainted with Mr. O'Coigly the

prisoner at the bar?—I know priest O'Coigly very well; I knew him at Dundalk, in the north of Ireland.

Are you acquainted with his hand-writing?—I have seen him write a number of times.

So as to have acquired a knowledge of his manner of writing?—Yes.

Look at that paper and say whether, from your knowledge of his manner of writing, you believe that to be his hand-writing?—I do believe it to be his writing.

Do you include in that the signature as well as the whole body of the paper?—I believe it to be all the same hand-writing, and Mr. O'Coigly's hand-writing.

Mr. Garrow.—This is one of the papers which was found in Mr. O'Coigly's pocket-book.

[It was read.]

"Manchester, Feb. 14, 1798.

"Sir;—Notwithstanding the severe prohibition enforced by the French against our merchandize, I am resolved to carry on the trade at all events.—Hence I send a confidential friend to arrange the necessary preliminaries with you, and take proper measures to elude the force of that law—if you judge it necessary that he should remain on your side the water to assist in receiving the goods—be it so.—You will procure him the passports or protections necessary in your country. Let me know as soon as possible whether we may venture to send goods into the French territories by land—I think it highly probable—if so—we shall have a great share of the trade to ourselves.

"Your's sincerely,

"WILLIAM PARKINSON."

Addressed—"Mynheer George Frederick Vander Hoop, Speigel-stræet, Rotterdam."

Look at this letter, signed Edward Wallace?—I believe that also to be Mr. O'Coigly's hand-writing.

Mr. Garrow.—We shall read this presently when we have proved it to have been found in the prisoner O'Coigly's pocket book.

Mr. Attorney General.—Look at that paper [the pass]—Do you find there the hand-writing of Mr. O'Coigly?—Yes.

Mr. Frederick Dutton cross-examined by Mr. Plumer.

You are Mr. Frederick Dutton, I think?—Yes.

What are you?—A quarter-master in the royal Irish artillery.

What were you before you were that?—I had a commission in the revenue which I hold yet.

How long is it since you were servant to a gentleman?—I have not been a servant for some time, now.

Whose footman were you last?—I do not conceive that I was any person's footman.

Have you any doubt about it?—I have a doubt as to being a footman.

Was it butler?—I never was considered as a footman.

In what capacity have you been?—I have been engaged as own man and butler, but never as a footman.

How many gentlemen's own servant have you been who had no other servant but you?—There were other servants in the house such as a coachman.

You were a livery servant?—You may term it that way if you please, although I wore my own clothes.

Do you mean to swear you never wore a livery?—No, I will not swear that; but I was not engaged as a livery servant.

When I put the question to you, whether you were a livery servant, you said you may put it so if you please, but I wore my own clothes?—I was engaged by Mr. Carpenter of Armagh, as his own man and butler; he begged I would wear the livery till another servant was got—when that servant was got I did not wear the livery.

Then it now comes out that you did wear a livery, and were in the capacity of a servant?—Yes.

How many people did you serve?—I lived with captain Bartom of the 63d regiment four years at first; I afterwards went to doctor Levinston, and from that to Mr. Lee, and from that to Mr. Carlisle, and from that to Mr. Carpenter; I think that is the extent of my servitude; I attended Mr. Coleman too, I forgot him.

That is five persons you have been servant to. Upon what occasion were you dismissed the service of Mr. Carlisle?—I dare say you will think it sufficient when I tell you, on my oath, that Mr. Carlisle over-paid me my wages, and I have never met him since without his speaking to me on the most friendly terms.

Mr. Justice Buller.—Answer the question, on what occasion did you leave him?—In consequence of an infamous woman having told a lie about me, which I believe Mr. Carlisle at this moment believes to be so.

Mr. Plumer.—What was that lie?—Things she laid to my charge that I was not guilty of.

What things?—A number of things.

Theft among the rest?—Yes.

And upon that you were dismissed?—Upon her information I was dismissed; and I am sure that Mr. Carlisle at this day, from the countenance he always gives me, is well convinced I was not guilty.

Pray how often have you been a witness in a court of justice?—Am I to include this time?

Either include or exclude it?—I was twice before.

Upon what occasions?—I was brought as a witness against one Kane, in Down-Patrick, a man who was executed; and I was brought against one Lowry, at the last Down-Patrick assize.

Were you a servant when you were brought as a witness first?—I was not.

What were you?—I was then keeping a public-house and grocery; during the time I was a servant, I kept a public house and grocery too.

While you were a gentleman's servant?—Yes; my wife carried on the business.

Do you mean to swear that you kept a public-house during all the time you were a servant to these five different gentlemen?—From the time that I lived with Mr. Coleman till I left Mr. Carpenter, I kept a grocery and public house: I had a grocery licence the whole time; but I did not the whole time I lived with Mr. Coleman keep a public-house.

Did you keep a public house or not?—Yes.

Without a licence?—No; I had a grocery licence from the time I lived with Mr. Coleman, till I left Mr. Carpenter: I had the public licence part of the time, but not the whole time.

From the time you served Mr. Coleman, you had this licence for a public-house?—Yes.

But before that, you were nothing but a servant?—Before I went to Mr. Coleman, nothing else.

I believe you were discharged from Mr. Coleman's upon a similar charge?—I was not.

Upon what occasion were you discharged by him?—In consequence of his cohabiting with another man's wife, and my discovering it; and he took a prayer book, and wanted me to take an oath that I would not discover it; and he offered me twenty guineas; and because I would not take that oath he discharged me.

And you mean to swear upon your oath, you were not discharged because some money was missing out of a drawer?—By virtue of my oath, and as I shall answer it to God, I never heard it from that day to this.

Do you recollect a person of the name of Laver?—Very well.

Do you remember threatening that you would be revenged on account of this business of Mr. Coleman's?—I do not recollect any such thing.

Will you swear you never said you would be revenged?—I might say that I would make him make a fair settlement, when he took my books and burned them.

You will swear you never said that?—I do not recollect ever having said that; I know at different times I consulted with Mr. Laver, in what manner I should proceed so as to bring Mr. Coleman to a settlement. When I quarrelled with him, he burned the books.

You once lived at Dundalk, did not you?—Yes.

You do not live there now?—I do not.

I believe you lodged some charge before a magistrate there, against Mr. Coleman, your master?—I did to an attorney, not to a magistrate.

Soon after that, you left the place; did not you?—Yes.

And went to a distance from thence: you have never applied to be rewarded for your evidence any where when you were in Ireland?—I believe not.

You believe not, you must know whether you have or not. Did you ever ask for a place of Mr. Cook the secretary in Ireland?—I believe I never have asked Mr. Cook for any thing.

You never applied to him upon any subject of giving you any thing?—I believe not.

You must know whether it is so or not?—I will swear to the best of my belief.

A man can have hardly forgot the case of an application to the secretary of state. You, who were once a common footman, and are now a quarter-master, as you represent, can tell whether you have ever asked a place of the secretary of state?—I have never asked the secretary of state for any thing, nor government for any thing; and I do not consider them as indebted to me; for I have done no more than my duty; but I do hope government will provide for my family, and protect me.

Have you never applied for a quarter-master's warrant?—I never did, upon my oath.

You swear to hand-writings; let me see if you know your own hand-writing.—Look at the signature to that letter?—I believe it is my hand-writing; I really do not know the contents of it. I know that I never applied to Mr. Cook either by letter or otherwise.

The question I asked was, whether you ever applied to any person for a quarter-master's place?—I never did; I believe that letter was to lord Carhampton. There was an anonymous letter sent to me at Newry, to bring me up in the dead of the night; a man was murdered that night; this letter was signed Henry Eustace, ordering my attendance at the castle at Dublin. I never knew lord Carhampton; but upon inquiring whether I could see his lordship, I went to him, and said, in consequence of your lordship's letter, I am come here, in obedience to your lordship's commands. He said, I do not know you: who are you. I said, I came in consequence of a letter I received last night; I gave lord Carhampton the letter; he brought me into his own office; captain Eustace was along with him. On looking over it, they found it to be a counterfeit; captain Eustace said, it is like my hand; but I swear I never wrote it. You have had a most miraculous escape, said lord Carhampton.

Mr. Gurney.—This certainly is not evidence.

Mr. Plumer.—He is telling a long story about what passed between him and lord Carhampton.

Mr. Justice Lawrence.—You asked him if that was his hand-writing: he is explaining the letter.

Mr. Plumer.—He has positively denied that he ever applied to lord Carhampton for a quarter master's warrant.

Witness.—I said, I did not apply to Mr. Cook.

Mr. Justice Buller.—He has just said, that he did apply to lord Carhampton.

Mr. Garraw.—Mr. Plumer asked him, if he ever applied to Mr. Cook: he said, No.—Then Mr. Plumer asked him generally, if he applied to any body, he said, No.

Mr. Justice Buller.—I have taken it so.

Mr. Plumer.—My question to him was, whether he had applied or not for a quarter-master's warrant.

Witness.—I did not apply for it.

You never did, to any body?—I did not.

Not to lord Carhampton, nor any body else?

—He first promised it to me before I wrote any thing to him about it; then I wrote if I might go down to my family in the North.

Then I understand now, that after he had promised, you did apply to him, to remind him of his promise, and to desire he would remember it?—That might have been the case.

Am I to understand that that was the fact, or not?—As far as I recollect, I wrote to him, begging he would give me an answer, whether I must stay in town, or go to my family; that it was more than I could afford, to be myself in one place, and my family in another.

Was that before, or after you had been examined as a witness?—After my first examination as a witness, I believe.

Were you in the capacity of a servant when you were examined as a witness?—No, I was not.

How long had you ceased to be so?—A few months.

Both the times when you were a witness, you had ceased a few months at each time?—Yes.

You have sworn you saw Mr. O'Coigly write. Upon what occasion did you ever see him write?—On various occasions: I have seen him write letters and notes; I have carried notes to the post-office for him, and can relate a singular circumstance to you and the Court.

I do not want your singular circumstance.

Mr. Garraw.—The witness is entitled to give the answer.

Mr. Plumer.—Your lordship sees how he tacks things on to his answer.

Witness.—There was a poor man of the name of Coleman in the gaol of Dundalk: he was under sentence of transportation, or death, I cannot say which; he was taken very ill—

Mr. Plumer.—Don't tell us about sentence of transportation, or death, without producing the proper evidence of it.

Mr. Garraw.—He was in prison?

Witness.—Yes; this man had a wife, and was in great distress: the man's wife used to come to my little shop for tea and bread, and what they wanted: she had no money, and lost her husband's watch in my possession for

the goods she wanted. Priest O'Coigly, I believe, through an act of charity to the poor man, took upon him to have this watch raffled, to relieve the poor man: he took a piece of paper, and put his own name, and after that about a dozen more, and desired me to call upon these people, and they would give me a shilling a-piece; he gave me his shilling, and said he would collect more about the town.

Mr. Plumer.—Upon that occasion you saw him write?—Yes.

How many times have you ever seen him write? Have you seen him write three times?—For more than twelve months together I have seen him write two or three times a week regularly: He used to come to Mr. Coleman's room every day: I do not think, during the fifteen months I lived with Mr. Coleman, he was with him upon an average less than two days a week.

Look at that paper, and tell me whether that too is your hand-writing?—I swear that is not my hand-writing.

Look at the back of it?—My name is on the back of it; my name, in my own hand-writing, or else it is a very complete counterfeit, it is very like it. There is nothing my hand-writing but my name subscribed on the back; the other I know nothing about.

I believe you were examined upon one of those occasions, as a witness against one Lowry?—I was.

Upon that occasion do you remember your saying that you had been sworn not to divulge the secret?—I did.

And the way you got out of it was by saying the book you swore on was a book "Reading made Easy"?—All that is true. I say this, that an oath was proposed, and that it was to be on a "Reading made Easy;" I did not conceive that I was bound by it as an oath.

You had bought some plate of this man?—Yes.

You swore to secrecy upon this book, "Reading made Easy," not to disclose that you had bought it?—Yes.

Afterwards you came into a court of justice, and swore against him?—I took the oath at that time with the intention of doing so; it was with the intention of apprehending the robbers that I did it, by the directions of Major Walton; it was not my own money that I purchased it with.

Mr. Frederick Dutton re-examined by Mr. Garraw.

You were examined in a court of justice under the usual forms and sanctions, swearing on the Evangelists?—I was.

And upon that occasion you disclosed an illegal oath which had been administered to you, upon a book which had no solemnity nor sanction belonging to it?—I did.

And which oath was, that you would conceal a felony previously committed?—Yes.

Was the oath administered to you, or did you take that book into your hand, and swear yourself?—It was administered to me.

In order to be able to disclose a felony previously committed, upon the subject of the plate: if I understand you right, you purchased the plate, and undertook, upon this illegal oath, not to disclose the transaction; you were afterwards called upon in a court of justice, under the solemn sanction of a legal oath, to disclose the transaction?—I was.

Did you disclose it truly?—I did.

Did you attend Mr. Coleman whilst he was in prison?—I did, fifteen months.

Do you know what he was in prison for?

Mr. Plumer.—That must be proved in a proper form.

Mr. Garraw.—How long have you been a quarter-master?—I think since last November; I have my warrant in my pocket.

Mr. Plumer.—With his lordship's permission I wish to ask whether the man was acquitted or convicted on the plate?

Mr. Garraw.—Mr. Plumer has forgotten his own objection of not having the record here.

Mr. William Lane sworn.—Examined by Mr. Garraw.

Are you acquainted with the hand-writing of Mr. O'Connor?—I am.

Have you seen him write?—I have.

Have you seen him write often enough to have formed an acquaintance with his character of hand-writing?—I have.

Look at that paper; do you, from your knowledge of Mr. O'Connor's hand-writing, believe that paper to have been written by him?—I do.

[The paper read.]

"Dear Jones; Our friend Bell requests you will dine with him this day at five o'clock. I hope to see you. Your's ever,

"Sunday. O. C."

Mr. William Lane cross-examined by Mr. Dallas.

I believe you are an attorney, and live at Cork?—I am an attorney, and do live at Cork.

At what time was Mr. O'Connor sheriff of the county of Cork?—He came into the office in February, 1791.

I believe you were his under-sheriff during the time he served the office?—I was.

Was not Ireland at that time in a state of considerable disturbance?—At the end of the year it was.

Was not Mr. O'Connor at considerable expense to maintain the tranquillity of the county?—I believe him to have been a very good high-sheriff.

Mr. Garraw.—This paper has been proved to have been found in O'Coigly's pocket by Revett. Do you, Mr. Lane, believe that to have been written by Mr. O'Connor?—It is

very badly written, but I believe it to be his hand-writing.

Mr. Dallas.—Look at it again, and tell me whether you will take upon you to swear that that is Mr. O'Connor's hand. I am sure you will not do what is wrong?—I certainly believe it to be Mr. O'Connor's hand-writing.

[The Letter read.]

"My dear Captain;—I enclose you a bank-note for 10*l*. I am sorry it is not in my power at present to accommodate you farther, as I have been disappointed in receiving remittances from Ireland. I mentioned to you my having some bills of Flannock's, which are here perfectly useless to me. Shall I see you before you go to the country! Particular business prevents me from calling on you this morning. Your's,

"A * - - - -
"Twelve o'clock.

Addressed to "Lieutenant Johnes, No. 14, Plough-court, Fetter-lane."

Mr. Attorney General.—I would ask whether these two letters are Mr. O'Connor's hand-writing?

Mr. Lane.—They are.

Mr. Attorney General.—I mean to read them hereafter; the first is a letter to lord Edward Fitzgerald, the other a letter to Mr. Roger O'Connor.

James Claris sworn.—Examined by Mr. Adam.

Do you know the prisoners at the bar?—One I have seen before, Binns.

Do you remember his coming to you at Canterbury, on the 23rd of February last?—It was about that time he came to my shop, about the 22nd or 23rd; he introduced himself to me by the name of Williams, he made an apology for introducing himself to me as a stranger. In the course of conversation a person's name came up that I expected was the person that recommended him to me, a Mr. Rickman, in London.

After he had introduced himself to you, did he ask you any questions respecting the coast of Kent?—He said he had business on the coast of Kent; that he wanted information respecting people on the coast engaged in the smuggling business.

Did you give him any information?—I told him that my acquaintance with people of that description was but little, but I apprehended at any place round the coast he might find numbers of people engaged in that business; he asked me the way to Whitstable; I directed him the way to Whitstable; he asked me if I could recommend him to any person at Whitstable; I said there was nobody there that I could take that liberty with; he asked me the names of the public houses in the place; I enumerated most of them that I

* The rest of the signature illegible.

recollected; I recommended him to one house in particular, knowing the landlord of the house, Mr. Kitchingham, the Duke of Cumberland.

Did he ask you about any gentleman in Canterbury whom he was directed to?—Yes; he asked me where he was to find Mr. Mahoney, I went with him there, he introduced himself to him in a similar manner as he did to me, but I did not hear the whole that passed between them, I had occasion to go away; when I came back again he was there, I repeated my directions again of the road to Whitstable.

What time in the evening was this?—It was in the morning, I should suppose about eight o'clock; it was before my breakfast-time, I usually breakfast between eight and nine.

What inn did you first see him at?—The first time I saw him at any inn was the evening of the same day.

Did he go to Whitstable?—He did, as I suppose; I saw him again in Canterbury that evening at a porter-house, a common public room for strangers and inhabitants shop-keepers.

Did he ask you any directions to any other place?—In the course of that evening he told me he thought he should not make it do at Whitstable, or should not succeed, or words to that effect; I gave him a direction; after some conversation he said he should go to Deal, could I recommend him to any person in particular at Deal; I did so.

Whom did you recommend him to there?—I recollected a person I knew of the name of Campbell, and I wrote him a note, which he carried to Mr. Campbell.

Is that the note you wrote?—Yes; this is my hand-writing.

[It was read.]

Canterbury, Feb. 22, 1798.

"Dear Campbell;—The bearer (Mr. Williams) is a friend of our friend Clio, and appears to want some information on business, of what nature I know not, but suppose in the smuggling trade; from the recommendation I have received he appears to be worthy of assistance, and having no friends in Deal, he wished me to write a note by way of introduction. You will excuse (I hope) the liberty I take, and judge of him from what you hear from himself.—I remain, dear Sir, yours respectfully,
JAMES CLARIS."

Addressed to "Mr. Campbell,
Pilot, Deal."

Mr. Adam.—Did he tell you any thing of what had passed at Whitstable?—No; but that it would not answer his purpose.

Did he say any thing about the hoy?—He said in the morning he was going to Whitstable; he expected some things down by the hoy, and some friends; that was in the

morning, when he first introduced himself to me.

Did he say any thing about the hoy when he came back to Canterbury?—I do not know that he did in particular; I believe something passed that I recollected the hoy generally came in in the beginning of the week; that vessel seldom comes in till a Monday. I had occasion to write to a relation of mine at Deal, and I put a postscript to the letter.

Does that postscript relate to Williams?—It certainly related to Williams.

When did you see him after this; did Williams, or Binns, as you know him now to be, desire you to write that postscript?—Yes; I told him, having occasion to write to a friend, I should put a postscript to this person, that he might, if he pleased, call upon him.

Mr. Dallas.—His being desired to write a letter is evidence; but the contents of that letter is not evidence.

Mr. Adam.—No; but that he wrote the postscript in consequence of a conversation. When did you see him after that?—Sunday evening afterwards I saw him again in Canterbury.

Where did you see him at that time?—At a public house called the Sun, in Canterbury.

Who was with him then?—Mr. Mahoney came up to me in the evening, and told me—

Mr. Dallas.—You must not state what passed with him.

Witness.—The way I came to see him then, was through the invitation of Mr. Mahoney to go down and see Mr. Williams again.

Who was with him at that time?—There was nobody in the room when I went in; but I went with Mr. Mahoney and another friend or two from my house. I had some conversation with him, and then he admitted that his name was Binns.

What else did he say?—He said his reason for going by another name was, being so lately tried at Warwick assizes, he thought people might make impertinent inquiries.

How long might you remain with him there?—Probably two hours.

Did you see any more of him?—I never saw him again till I saw him at the bar.

Did you mean Rickman, by Clio?—Yes.

Thomas Clio Rickman sworn.—Examined by Mr. Garrow.

I believe you live in London?—Yes.

Are you acquainted with a person of the name of Claris, at Canterbury?—Yes.

Do you know the prisoner at the bar, Binns?—No; I do not recollect ever seeing him before.

Did you ever give him any introduction to Mr. Claris, either by letter or message?—I never did.

Your name is Clio Rickman?—Yes.

And you are known by that name to Claris?—Very well, some years ago.

Kean Mahoney sworn.—Examined by
Mr. *Solicitor General*.

You are a fishmonger and fruiterer at Canterbury?—I am.

You have formerly been in a different situation, I believe?—Yes.

Do you know Mr. Binns?—I do.

Do you remember his coming with Mr. Claris at any time?—I do.

When was that?—I cannot speak positively as to the day, but it was somewhere in the latter end of February, I believe; I know it was on a Friday.

Did you know him before he came to you with Claris?—No; I never saw him before.

What conversation had you with him?—He told me he was recommended by a friend of his to call on me?

Who was that friend?—A Mr. Bailey.

Of what place?—I do not know where he was then, but he formerly lived at Foreditch, near Canterbury.

Do you know what was become of Mr. Bailey at that time?—No.

What did he say when he introduced himself to you?—He told me there were some friends of his were very much distressed to get to the other side; that they wanted to establish something in the smuggling line, and that he was anxious to get them on the other side; that previous to his leaving London he was directed to call at Whitstable, that he wished to know if I knew any persons there that were used to letting boats; I told him I did know, and mentioned the name of one in particular, a man of the name of Foreman.

Where did Foreman live?—In Whitstable.

What is he?—He belongs to the Oyster Company of Dredgers.

Did Binns ask about any body at Whitstable?—He said he was directed to a person of some other name, which I do not immediately recollect; but I should recollect the name if I heard it—it was of the name of Appleton.

When he said he wanted to go on the other side, did he say to what place?—He did not say he wanted to go; but he had some friends in London wanted to go on the other side, he said either to Flushing or Ostend.

Did you see Mr. Binns again that evening?—I saw him on his return from Whitstable, that was, I believe, that evening.

What conversation had you with him then?—I asked him how he was likely to succeed, he told me he feared not at all. I asked him why; he said they were so exorbitant in their demands, that he was afraid he could not comply with them.

Did you see him after that?—On Sunday I saw him, he called at a public-house where I was, in Canterbury, on horseback.

What was the public-house?—The Shakespear.

What did he say to you then?—He told

me he was very much fatigued, having rode from Gravesend, and wished to rest himself; and desired me to recommend him to some house where he could be more private and comfortable than he was where he was last.

Did he say where he had been?—That he had been to London.

Did he tell you what for?—I understood it was to acquaint those gentlemen with his journey to Whitstable, and the result of it; he did not tell me that.

Did he say when he left London?—Yes; he said he left it in the morning of Sunday, that he got to Gravesend in one of the Gravesend boats.

Did he tell you how he got from Gravesend to Canterbury?—On horseback.

Did he say any thing more to you about his reason for coming back?—He said the gentlemen were not at London that he wanted to see.

Did he say any thing about those gentlemen, whether they were coming, or what?—No.

Did he mention any thing about the Whitstable hoy?—He said he understood they were to come by the Whitstable hoy; but he could not tell any thing of it, because they were gone, he said, before he came out of London.

He said he wanted a quieter house than he was at before; what house was he at before?—The Rose, he told me.

Did you recommend him to any house?—I did.

What was that house?—The sign of the Sun, kept by a man of the name of Cloke.

Did you go with him there?—I did.

When you got there, did he desire you to inquire about any letters?—No, he did not; he said he wished to know whether there were any letters for him at the office, and wished to get a servant boy in the house to go to inquire for them; I told him I would go, as he was so fatigued.

Where did he direct you to go?—To the Post-office, or to the Fountain; I went to the Post-office.

What did you inquire for?—Letters to the name of Williams, addressed to the office, or to the Fountain.

Did you find any letters there?—The post-master delivered me two, addressed to the name of Williams.

Where?—I do not know exactly, for I did not take upon me to read them.

Who paid for them?—I did, and was repaid by him when I delivered him the letters, which was immediately; I know nothing of their contents.

Look at that letter.—I see it is directed by the name of Williams; but I cannot say this is the letter: I put them both in my pocket as soon as I received them from the post-master, and did not examine them at all; I thought it a matter of impertinence to do such a thing: I took the post-master's word

that they were directed for him; I took them and put them immediately into my pocket, and delivered them to Mr. Binns, and he paid me for them.

Kean Mahoney cross-examined by Mr. Gurney.

Mr. Binns desired you to enquire for letters by the name of Williams?—He did.

Did he give you any particular reason for not going by his own name?—He did, and it appeared to me a very sufficient reason: he first introduced himself to me by the name of Williams; then, after having mentioned his business, and finding I was a native of the same kingdom he belonged to, he told me he hoped he need not use any more disguise with me; he told me he would inform me his name was Binns, and the reason why he did not continue that name, was, his having once been tried for an offence against the laws of the country, and that though he was acquitted, he understood Canterbury to be so curious a place, and inquisitive, that he did not choose to go by his own name.

Did he tell you he understood his letters were opened at the Post-office that were directed to him by the name of Binns?—I am not positive of that; but I believe there was something of that kind passed.

You saw him afterwards, I believe on the Monday morning?—I did.

Upon that occasion did you go to Charis's shop, and purchase a map of Kent for him?—He came to me in the forenoon about twelve o'clock, I pressed him to stay dinner with me, he declined it, and begged I would go and purchase a map of Kent for him, which I did.

Look at this map, has it the appearance of being the map?—This has the appearance of being such a map as I bought.

Did he borrow any article of clothing of you on that Monday?—Yes, he said, not having any luggage, he wanted a shirt and neckcloth. I lent him a shirt and neckcloth; I was obliged to call for his, in order to have them washed against his return.

How soon did he propose returning?—I understood in a day or two.

And you got his linen washed for him against his return?—I did.

You did not understand that he was going abroad?—No, I never understood so.

William Kitchingham sworn.—Examined by Mr. Garrow.

I believe you keep the inn, known by the name of the Duke of Cumberland, at Whitstable?—Yes.

Do you remember, on Friday the 23rd of February, seeing any person at your house who is now in Court?—Yes, that man (Binns).

He came to your house?—Yes.

What did he say to you?—He inquired if I knew a Mr. Mahoney, a fishmonger, at Can-

terbury; I told him I did not; if he had pronounced it Mahon, I should have known it; he then asked me whether I knew Mr. Charis, a stationer there? I said yes; he said he was recommended to my house by Charis. He then asked me if I knew Foreman or Appleton of Whitstable? I asked him which of the Appletons, for there were several? He said the one that had got a vessel; I told him that that Appleton was at Chatham; he said he was going to Canterbury; he asked me if I thought he could get a vessel to go on the other side; I supposed he meant to Flushing; I told him I thought not, as the navigation was stopped.

Was there an embargo at that time upon the ships at Flushing?—Yes; he told me he thought it was not.

Did you mention any other place that he might go to?—Yes; I told him he might go over to Guernsey, and he said that would not do; he might be as well where he was. I asked him then if I could not send for some master of a vessel; I told him I would send for Foreman, and went out for that purpose.

Did Foreman keep a vessel?—He has part of some vessels which belong to the oyster ground. I saw Mr. Foreman near my own door; I told him there was a man at my house wanted to go on the other side; I told him I did not much like him—

Mr. Dallas.—You must not state any thing you said to Foreman when the prisoner Binns was not present.

Mr. Garrow.—Did you introduce him to Binns?—I did.

What passed?—I left him alone with Binns.

Did Binns stay there and dine?—Yes, he had some oysters, and went out afterwards, and he told me he should return in two hours. I asked him if he had got a satisfactory answer from Mr. Foreman, when Foreman left him, he said he should know when Appleton came back, he was gone to his owners; he went out then; he returned again, and asked me whether Appleton was come back; I told him no. Appleton afterwards came with Norris and Foreman; they went into a room by themselves; I was not present at their conversation; I heard no discourse till Binns was gone.

You must not state what they said after Binns was gone. Had you any farther discourse with Binns?—No.

When did Binns quit your house?—He went away about one o'clock, and left them there.

Are you sure this is the same person?—I am.

William Kitchingham cross-examined by Mr. Dallas.

You do not know what passed in the room between Norris and Appleton?—No farther than carrying in liquor, but I did not stay in the room.

Edward Appletton sworn.—Examined by Mr. Fielding.

Do you know the persons of any of the prisoners?—Yes, the middle one, Binns.

Did you see him at Whitstable on the 23rd of February?—Yes.

What time of day was it?—Between twelve and one o'clock, when I first saw him.

At what house did you see him?—At the Duke of Cumberland.

How came you to see him?—I went to him there.

Was any body in company with him when you went into the room?—No; Foreman and I went in together; it was between twelve and one.

What was said when you and Foreman went into the room?—He addressed himself to me, and asked me what he should give me to take him across the water. I told him the times were particular, and there was an embargo in all the ports, and I could not engage till I had seen my owners.

When you first went into the room, was there any conversation about you or Foreman, who you were?—No.

Then upon your making this observation, in answer to his question, what more passed between you?—He asked me several times what he should give me; I told him I could not engage with him till I saw my owner; I would go to Herne Bay for that purpose, and would be back in two hours.

How far is Herne Bay?—About five miles; we parted; after I got out of the door, he asked me again how much he should give me for taking him across; I told him I could not give him an answer till I had seen my owner.

The question was asked you again when you were going out of the room; you said it was answering no purpose talking about it till you had seen your owner?—Yes.

Did Foreman say any thing to him while you were there?—Yes; but I do not recollect what Foreman said.

Do you recollect any question that he asked of Foreman?—No, not in particular.

Was any thing more said at the door when you were going away than what you have related?—No.

Did you leave him at the house?—Not at the house; I went to Mr. Norris my owner.

When you had seen Mr. Norris, did you and Mr. Norris see Binns again?—Yes.

When was that?—About four in the afternoon.

Was it at the same house you had seen him at before?—Yes.

Was Foreman in company with you at that time?—Yes.

Then you were all four, Norris, Foreman, Binns, and you, in a room together?—Yes.

Now relate what passed at that time. Did he begin the conversation with you, or you with him?—The first conversation, I believe, was between Norris and Binns; he asked Mr. Norris what he should give him to

hire his vessel to carry him across the water to Flushing, Dunkirk, or Calais?

You had told him before that Norris was your owner; did he know that the man you brought with you was Norris?—I told him so.

Now tell my lord and the jury particularly what he said to Norris?—Norris said it was hazardous, and a great expense, the vessel being stopped, and so on.

Did he say any thing to Norris before he said that?—He asked him what he should give him to carry him across the water to Flushing, Dunkirk, Calais, or Havre. Mr. Norris said he could not think about letting his vessel go without he had security for her. He asked him the value of the vessel, and Binns called himself Williams at that time; Norris asked three hundred guineas; Binns asked did he take him for a child, to ask any such sum as that; and there were some words between Mr. Norris and Mr. Binns; they agreed for 150*l.* for the passage to Flushing, and that if the vessel was brought safe back, he would pay a hundred instead of a hundred and fifty. Then Binns asked when she would be ready? Norris said, she is ready now, I was just going to send her away for some oysters. Binns said, It don't matter whether I bring three, four, or half a dozen. I answered, It is no matter how many you bring; when you come I shall be ready. Then he told me he should be down again on Sunday; I told him I thought he could not be back by Sunday. He said, why not? this was Friday night, he could be down again by Monday.

Did he say he was going up to town then? Yes, and meant to be down on Sunday; and I saw no more of him till I saw him a prisoner at Canterbury.

Did Norris hold any more conversation with him than what you have stated?—No.

Was any mention made of any security for this boat?—Binns said he would wish to secure the money in the hands of Mr. Claris at Canterbury; Norris said he would wish to have the money in the bank at Canterbury; Mr. Binns said, the money was as well in the bank at London as in the bank at Canterbury; he would rather have it at the bank at London than the bank at Canterbury; he did not want all the country to know all his business. I said there was no call for it; that so much money might be put in the bank at Canterbury, and the people not know the business neither.

Was there or not any agreement made?—Yes, there was an agreement.

What was the agreement?—Three hundred guineas for the security of the vessel, a hundred and fifty pounds for the passage, if they came back directly, and if they took a cargo back a hundred pound for carrying them there; then I left him, and saw him no more till I saw him in custody.

Mr. Justice Buller.—Was it at last agreed that the three hundred pounds should be lodged in the bank at Canterbury?—Yes.

John Foreman sworn.—Examined by
Mr. Attorney General.

What are you?—A seaman.

Do you remember seeing any of the persons that are now at the bar, upon Friday the 23rd of February last?—I know none of them but Mr. Binns; he was along with me.

Did he come to you upon any business?—Yes; he told me he was recommended to me by Mr. Mahoney, of Canterbury; he inquired of me for one Mr. Appleton; I asked him which, there were several Appletons; he said he did not rightly know, but he thought his name was Thomas Appleton.

Did he tell you what he wanted?—I told him Thomas Appleton was up at Chatham with his vessel, which was repairing at the carpenter's.

Did he tell you after that what he wanted?—He asked me then if I knew one Mr. Mahoney; I told him no, I knew no such man; I asked him, what is he? he said, he is a fishmonger, and sells oysters. Oh! said I, I know who you mean; that is Mr. Mahon.

You were puzzled, hearing him called Mahoney, instead of Mahon?—Yes.

What farther passed between you?—Then he asked me if he could get a vessel to go on the other side. I wanted to know where; he said to Flushing; I told him no; there was an embargo laid, and I did not think it was possible to get the vessel away from there again. He told me he thought he could.

After he told you he could get it away, what farther passed?—Then he asked me whether he could go to France; whether Dunkirk or Flushing was nighest; I told him Dunkirk.

Did he mention any other places?—Yes, he mentioned Calais, and Havre de Grace; Havre, as we call it. He asked me which was the nighest port in France to our place; I told him Calais; he said he had rather be in France than Flushing, because he was better acquainted there than at Flushing.

Had you any conversation how long you were to stop in France?—I sent to Mr. Norris, who was the owner of the vessel, about the vessel.

Did Norris come up to you?—Yes.

What passed when Norris came up between Norris and Binns?—When he came up we went into the sign of the Red Lion.

And Norris and Edward Appleton were with you?—Yes; when we came there, I said, here is a man wants to go on the other side.

The prisoner was not at the Red Lion?—No.

Norris, Appleton, and you, had some talk at the Red Lion; now we will not trouble you to state that; but after you had that conversation, you went and saw Mr. Binns?—Yes.

Where?—At Kitchingham's the Duke of Cumberland.

What passed there between Binns and any of these people?—He agreed to give a hun-

dred and fifty pound for the vessel to go over, and one hundred pound a month for three months in case the embargo was not taken off, in case the ship should be stopped; that is all I know of the matter.

Was there any talk in what bank this money was to be placed?—He was to leave it in Mr. Claris's hand.

Who said that?—Mr. Binns wanted to leave it in Mr. Claris's hand.

Was there any objection made to that?—No, not to that; Mr. Norris said he did not care much about it; he would as lief have it there as kept in the bank.

There was a talk about the Canterbury bank?—Yes.

Was there any talk about what number of people were to go over?—Yes; he asked me whether the vessel could carry three or four more persons besides himself, and a few trunks and boxes; I told him there could be no objection, I dared say, to that.

Was the vessel to carry any cargo if she went abroad?—She was not to carry any cargo there.

Was she to bring any crop back again?—If she got any freight back, she was to be freighted directly, and then it was to be but a hundred and thirty pound in the room of a hundred and fifty pound, if she came back directly and did not stop, if he could have got any thing to freight her with.

Did any of you let Mr. King, the officer at Whitstable know any thing about this?—No, not till after they were taken; we knew what we aimed at.

You suspected a little, perhaps?—We knew what he was by his talk, to be sure we did.

John Foreman cross-examined by Mr.
Gurney.

You seem, from the manner of giving your evidence, to be quite an old acquaintance of the attorney-general's; you have been often in the exchequer, have not you?—I do not know but I have.

The next time you saw Mr. Binns after you saw him at Whitstable, was in custody at Canterbury?—Yes.

Can you recollect saying to him there something like this "you thought to hang me, but now I will take care and be even with you?"—I did not say that; it was Mr. Twopeny came to me—

I am asking you as to what you said to Mr. Binns, when he was in custody at Canterbury. Upon your oath, did not you use those words "you thought to hang me, but I will be even with you?"—No, I never said any such words.

Did you not say any thing like it?—Mr. Twopeny asked me to come in; I said I would not go to London without I saw the man, to know whether it was the man or not.

Mr. Justice Buller.—Did you, upon any occasion, say to any body that you would be

even with Binns?—I said, I will tell you what Mr. Williams (he went by that name then) I said, Mr. Williams, you would not have minded, if I had carried you over hanging me; but I never said a word about hanging him.

Mr. Gurney.—Upon your oath, you did not make use of the phrase, that you would be even with him?—I will take my oath of it, and forty oaths.

Mr. Attorney General.—You said to Binns he would not have minded hanging you?—Yes.

When you saw Binns at that time, did he know you, or affect not to know you?—He did not like to own that he knew me; I knew him.

Did you tell him at that time that you knew him?—Yes, to be sure I did, or I should not have taken the trouble to have gone to London.

Mr. Gurney.—Have you never uttered any declarations of enmity towards Binns? have you never said, at any time since, that if you could have got him half way over the water, you would have drowned him?—No.

You have never said that since you have been in this town?—I have not.

Nor any thing to that effect?—No, I have never said any thing at all about him.

When you were here last time, I mean?—No, I never had such a thought: I never said a word about him.

Thomas Norris sworn.—Examined by Mr. Abbott.

Where do you live?—At Herne Bay.

How far is that from Whitstable?—About five or six miles.

Are you owner or master of a vessel?—Part owner of a vessel.

Do you remember being sent for to go to Whitstable on Friday morning the 23d of February?—Yes.

Did you see either of those gentlemen at Whitstable?—Yes, I saw that gentleman in the middle (Binns).

What name did he call himself by then?—He did not call himself by name; he only mentioned before we parted, "Then I William Williams, will deposit so much money in the hands of the banker, for the security of you."

Who went with you when you went to him?—John Foreman and Edward Appleton.

The two witnesses that have been just examined?—Yes.

What was the house at which you saw him?—The Duke's-head, kept by one Mr. Kitchingham.

When you went there to him, what was the subject of your conversation?—They told him I was the person they had sent for respecting the vessel. He asked me if I could let him a vessel to go to Flushing; I told him it was a dangerous business in war time, and that it was very probable, as they were Englishmen,

that they would be detained as prisoners of war. As to that, he said, it would be no such thing, for he would insure the vessel to return safe back.

What answer did you make to that?—I told him I thought it was a very hazardous thing.

What did he say about the price?—I said I should leave it to Mr. Appleton, and if he had no objection to the price, I should like to go if he undertook to do it; I told him I should not like to go without I had security for the value of the vessel; he asked me what it was; I told him three hundred guineas, and that I should farther demand, if she was stopped, a hundred pound a month for three months if she was detained there: he asked me how that could be managed; I told him I should like the money to be deposited in one of the Canterbury banks: he asked me if it could not be as well put in the hands of one Mr. Claris, or another person of Canterbury, which I objected to, not knowing either of those people; well, he said, it was not material about that, he asked me what I would have for the passage, I told him a hundred and fifty pounds; he got up then and asked me if I thought he was a child, he would give no such money, he said that a vessel could take a cargo from Flushing to make good the freight for her back: I told him that was a very dangerous piece of business, so he then asked if we could take him to either Dunkirk, Calais, or Havre, that he would rather go to either of those places than to Flushing.

Did he give any reason why he would rather go to either of those places than to Flushing?—I did not ask him any reason, nor he did not give any: he said that the vessel would not be detained more than three hours; that he should return instantly in her if he went to either of the ports.

Did he say how many people were to go?—I will tell you presently; Mr. Appleton who was master of the vessel, objected to going to either of those ports, he said he was not capable of taking the vessel to either of the places except Flushing; he said, if she goes to Flushing what will you have provided she brings back a crop; I said, if she brings any thing back I will have a hundred pound, which was agreed upon; then he asked when the vessel would be ready for sea, I told him she would be ready at any time, for she was then ready to go for a freight of oysters; he said he thought he should be ready by Sunday, and it ended by saying "I William Williams deposit this money for your security in the Canterbury bank:" then he took his leave of us.

You mentioned just now you would tell us by and by something that was said, as to how many people were to go with him?—He said, would it make any difference in the price respecting the quantity of people that went with him; I told him no; he said perhaps three or four more might go with him; I told him the

vessel might as well carry eight or ten as one when she was hired.

Do you recollect whether any thing was said about baggage?—I did not hear a word said about baggage.

Thomas Norris cross-examined by *Mr. Dallas*.

How long did this conversation last between you and *Mr. Binns*?—It is impossible for me to say how long it lasted, we were in two separate rooms first; in a small room by ourselves when we were conversing about the business.

I take for granted as you were making a bargain you had a great deal of conversation on the subject?—Not a great deal, the time was short.

How long might it last altogether?—I was not more than an hour in his company.

You had never been in his company before, nor have since?—No.

In the course of that conversation before any thing was said about depositing three hundred pounds, did you not understand that *Mr. Binns* was not himself going in the vessel, that he wanted it for some friends?—He said for himself.

Yes, originally, but at last he told you he would return with the vessel, and it would not be detained above three hours?—Yes.

Robert Campbell sworn—examined by *Mr. Garron*.

You are I believe a pilot at Deal?—I am.

Do you remember, on Saturday the 24th of February, any person calling upon you and producing this letter from *Claris* to you?—It was brought to me by that person (*Binns*) on Saturday the 24th of February.

At what time of day was it that he came to you?—Nearly at noon.

Did you open the letter and read it?—I did.

Were you acquainted with *Chio Rickman*?—I was.

Upon reading the letter, what did you say to *Mr. Binns*, by what name did you address him?—By the name of *Williams*; I asked him his business, he told me that he wished to get a passage to *Flushing*; I told him I thought it was at present impossible, as there was an embargo laid at *Flushing*.

Did you add any thing more?—I did, I said that the only method for him to proceed would be to go to *Yarmouth*, and go by the way of *Hamburg*.

What answer did *Williams* make to that?—He said that the person was afraid of being seized.

What did you understand by that?—I supposed he meant from the *Exchequer*.

What did you say upon that?—I said, then it is not yourself; he said no, I do not know that I shall go myself.

What more did you say about the port?—I told him he had better wait, that the port might be opened.

What answer did he make to that?—No particular answer, he seemed to be quite entirely comfortable upon the business; I asked him to sit down to dinner with me; he did, and from thence we went to the *Royal Oak*, and he seemed very comfortable there.

Did he put any more questions upon the subject?—I saw *Mr. Hayman* coming, and I knew he had used *Flushing*, I had some conversation with him.

After that, had you any conversation with the prisoner, *Binns*, respecting the price?—He asked me the price in my own house; he asked me what I thought it might cost him; I told him fifty or sixty guineas; he said he thought that a great deal of money; then I went with him to the *Royal Oak*.

After your conversation with *Hayman* did you communicate the subject of it to *Mr. Williams*?—I told him that there was no likelihood of his getting across then, or words to that purport.

What did he say to that?—That he must wait.

Did you set him and *Hayman* to talk together?—Yes.

Did you hear the conversation that took place between *Hayman* and him after you had put them together?—I did.

What did you hear pass between them?—It was no more than general conversation, there were a great number of people sitting in the room.

What was that conversation about?—I do not recollect.

Do you know a person of the name of *Mowle*?—Yes.

Did any conversation pass between you and *Williams* after *Hayman* came in, in which the name of *Mowle* occurred?—Yes, I said I might, in all probability, be out of the way when he might come down again as he promised: in the course of two or three days, he said he might come down.

What was to be done in case you were out?—I mentioned that he might set with *Mr. Mowle* the same as he might with me, that if a boat was going across that the person might have a passage.

Was any thing said about trunks or baggage?—When that was proposed he asked me whether two or three trunks would be any obstruction, or there would be any objection to that; I told him none at all.

Was any thing said about what should be done, if the trunks should come when you were out?—*Mr. Hayman* told him he might bring them to his house, as being an upholsterer.

Did you go with *Williams* any where after you had been to the *Royal Oak*?—I did, I went to get a post chaise to go to *Canterbury*, and he said he was going to *London*.

Did he tell you how soon he was going to *London*, and expected to be back again?—He said he would wish to be at *London* in the morning, and would be back again in a few days.

Did he assign any reason to you for wishing to go to London immediately?—No, he assigned no reason.

Lancelot Hayman sworn.—Examined by Mr. Adam.

You are an upholsterer and live at Deal?—Yes.

Do you remember being at the Royal Oak, the 24th of February?—Yes.

Was Mr. Campbell there?—Yes.

Was either of the prisoners there?—Yes, Mr. Binns.

What name did he go by?—The name of Williams.

Do you remember having any conversation with him respecting lodging his trunks at your house?—Yes, Mr. Campbell asked my permission to let Mr. Williams, a friend of his, send two or three portmanteaus of clothes to my house; I agreed to it.

Was he present?—He was.

Was your address taken at the time?—Yes.

Who wrote it down?—I believe Mr. Barham.

He was in the company at the time?—Yes.

How was it written?—I believe with a pencil.

To whom was it given?—I do not recollect.

Who asked for your address?—Mr. Binns.

Then it was written for him by Mr. Barham?—Yes.

Do you remember seeing the prisoner at any other time?—I saw him on the Monday evening following.

Was he alone then, or had he any body with him?—Alone.

Where did you see him that evening?—At the Royal Oak again.

What passed between you and him then?—Mr. Campbell informed the prisoner on the 24th, that he was going to London, and he asked me if Mr. Campbell had returned from London, I told him I did not know, but I would inquire the next morning, which I did.

Did any thing more pass that evening between you and the prisoner?—Not that I recollect.

Did you see him next morning?—I informed him that Mr. Campbell was not at home.

This was upon Monday the 26th of February?—Yes.

Did you go to any body else?—I did not.

Do you remember any thing passing between you and Mr. Binns respecting Mr. Mowle?—On Saturday the 24th, when Mr. Campbell informed the prisoner he was going out of town, he recommended him to Mr. Mowle; I informed him on Tuesday morning following, that Mr. Mowle was at home, and that Mr. Campbell was not.

Did you go with him to Mr. Mowle?—I did not.

Where did you go with him?—No where, I saw him at the Three Kings at Deal.

Who was with him when you saw him there?—I do not know, there was a second person in the room.

Look at the prisoners again, do you see that second person?—Not there to my knowledge; there was a second person in the room, but I did not see his face; when I entered the room the second gentleman was standing with his face towards the fire.

The second gentleman was a stranger to you?—Totally.

This was at the Three Kings?—Yes, on Tuesday morning.

How was the gentleman dressed, who stood with his face to the fire?—He had a long straight drab coloured coat on, the other part of his dress I cannot speak to.

Was it a great coat?—I do not recollect.

Was it a coat like any of these that lie upon the table?

Mr. Dallas.—He has said he does not recollect.

Witness.—I do not know the make of the coat, but it was a coat something about that colour, and it was nearly of that kind.

Did you attend to the cut of that person's hair?—I did not.

Did you return to your shop from the Three Kings?—I did.

Did you see any thing more of Mr. Williams, after that?—I did on the Tuesday morning after I informed him Mr. Mowle was at home, Mr. Binns met Mr. Mowle by the corner of my shop, and there a conversation took place respecting the possibility of providing a boat.

Did you hear that conversation?—I did; Mr. Mowle told Mr. Binns he thought it was impracticable.

What passed between Binns and him in your hearing?—Mr. Binns said to Mr. Mowle he wanted a passage to Flushing for two or three friends, Mr. Mowle said he did not know of any possibility of going, he gave for reason that he knew of no conveyance, I do not recollect that he gave any other reason.

Did Mr. Binns say why he wished to hire a vessel to go to Flushing?—He said he wanted to get a conveyance for two or three friends, but that he himself was not going.

Where did he say he wanted to go to?—The first place was Flushing, I believe a second place named was Calais.

Any other place?—None that I heard; Mowle answered the same as before, that he knew of no fit conveyance.

What did Binns say to that?—I don't remember that he made any reply.

Did he mention any other place that he was going to from Deal?—None that I heard.

Did he say any thing about his baggage, or any thing of that kind?—Nothing more than I have before observed, that I gave my consent for three or four trunks being sent to my shop.

Did he say where they were to come from?—I did not hear that.

Did he, before he parted with you, say where he was going to in Kent?—Not that I remember.

Do you know what time he left Deal upon the Tuesday?—It was about noon that this conversation ended by my shop with Mr. Mowle.

Did he say any thing to you before he left your shop, of where he was going to, after he should leave Deal?—I do not remember his mentioning any place. He left me, and I saw no more of him.

Thomas Barham sworn.—Examined by Mr. Garrow.

Are you of any profession at Deal?—A grocer.

Do you recollect upon Saturday the 24th of February last, being present with Mr. Hayman, and any other person, when you wrote any direction?—Yes.

Do you see any body here that was in company with them?—Mr. Binns was in company then.

Do you know him by that name?—He was introduced to me by the name of Williams, but he declared before he left the company that his name was Binns. The company was originally a public one, but after a short space, the company had one by one left the room, excepting Mr. Binns, Mr. Campbell, Mr. Hayman, and myself. Mr. Campbell introduced Mr. Binns to me by the name of Williams, as a friend of his, saying he was a man in distress, and wanted to go on the other side of the water. I do not immediately recollect what reply I made upon that.

Did Mr. Binns make any reply to that, or correct that statement?—Not immediately. Flushing seemed to be the object; Mr. Campbell raised an objection to that, and said Calais was the properest place.

What objection did he state to Flushing?—I do not immediately recollect, whether it was because it was not so handy for the passage as Calais; but I do not recollect that any particular reason was assigned: the conversation was in general terms about the probability of getting a boat for the purpose of going across the water, when the terms were mentioned, I think a sum of money was mentioned by Mr. Campbell, as necessary for that purpose, but he said he could not effect this purpose himself, but must have the assistance of others, of course; and those friends that he meant to employ in that expedition, were not then at home; mentioning Mr. Mowle, and one or two others, who, being pilots, were up with ships in their profession, but would return on Monday, Tuesday, or Wednesday, and probably would do what he required of them; but he could say nothing more than that there was a probability of his getting over to some place.

When Calais was mentioned, did Williams make any objection to Calais?—I do not recollect that he did. Mr. Campbell left the

room sometime in the course of the conversation; and Mr. Binns then declared his name something in these words, he said, "I think it may be necessary to inform you who I am, my name is John Binns, perhaps you may recollect my name."—I did recollect it then, and nothing farther took place, excepting that Mr. Binns, in the course of conversation, declared he was not certain he should go himself.

Who was to go then?—He mentioned no names, but for three or four friends. I believe he repeated that more than once or twice.

Was there any conversation about luggage?

—Mr. Binns asked Campbell whether a few trunks would be any incumbrance to the boat or objection, he said not at all; Binns asked for an address of where he might direct the luggage, whether he might send them to Campbell's; Campbell said he might, by all means, but as his was a private house, and he probably might be out upon his profession, if Hayman would take them in for him, being a man in public business, it might be more convenient. Mr. Hayman agreed to do it; Binns pulled out a book to set down his address, Hayman was called out of the house at that moment, and he desired me to put down his name for that purpose, which I did.

Look at this, is this the address you wrote, and which you delivered to Binns?—No, I do not believe this is my writing. I did write Hayman's address, on a leaf of a pocket-book.

Of whose pocket-book?—On a leaf of a pocket-book of Binns's, being written in pencil, I am not able to speak to that; I cannot believe this to be my hand-writing.

Look at the address in this pocket-book?—This is my hand-writing, I wrote it in this pocket-book, which Binns produced and delivered it to him.

Mr. Justice *Buller*.—What is that pocket-book.

Mr. *Garrow*.—Binns's pocket-book. Did you state what passed upon the subject of the price?—I think the sum of 60*l.* was mentioned, but I do not recollect that it was a positive agreement.

Mr. *Garrow*.—We will read first the direction in Binns's pocket-book, written by the present witness.

[It was read.]

"Mr. L. Hayman, jun.

"Middle-Street"

Mr. *Garrow*.—We will now read this paper proved to have been found in Mr. O'Connor's purse.

[It was read.]

"Mr. L. Hayman, jun.

"Auctioneer,

"Middle Street,

"Deal."

James Elliot sworn.—Examined by Mr. Fielding.

Do you keep the Three Kings' hotel, in Deal?—Yes.

Look at the gentlemen at the bar; do you know the persons of any of them?—Two of them.

Which?—Mr. O'Connor and Mr. Binns.

Did you see them, or either of them, at Deal, on the 26th of February?—Yes, I saw them both.

Were they in company together, or not?—They were in company together.

At what time did they come to your house?—They came together to my house, on the 25th of February, at six in the evening.

How did they come?—On foot.

First of all describe, if your recollection will serve, how they were dressed?—Mr. O'Connor was dressed in a straight drab coloured coat, high up in the collar, with metal buttons, I think rather tarnished, cut straight down the thighs.

What was the other part of his dress?—I do not recollect, he was buttoned close up.

How was Binns dressed?—I think he had a brown great coat on, with a black collar, rather rough.

You showed them into a room, I presume?—The waiter did.

How long did they continue at your house?—Till the following morning about ten or eleven o'clock.

Had you any conversation with them during the evening?—None.

Did they sleep at your house?—Yes.

Did they bring any baggage or clothes with them?—None.

Did any people from Deal visit them at your house?—Yes, Mr. Hayman.

You were not in company with them at the time Mr. Hayman visited them, were you?—I was not.

Had you any conversation with them, during the time they staid in your house?—Never, no farther than waiting upon them.

At what time was it that they left your house?—About ten or eleven o'clock.

Did you see them after that time?—I did not, they turned out to the left, and walked down the street.

You have no doubt as to their persons?—None.

Jeremiah Mowle sworn.—Examined by Mr. Abbott.

What are you, and where do you live?—I am a pilot, and live at Deal.

Do you know Mr. Hayman, of Deal?—Yes.

Do you remember being with him in the evening of Monday the 26th of February last?—No, not on the 26th, it was Tuesday the 27th in the forenoon.

Do you know the person of that stranger, whom you then met?—Yes, it is the man who stands in the middle (Binns).

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Did he call himself by any name then that you heard?—Not to me; I was told his name was Williams, but not till after Mr. Campbell came from London.

Where did Hayman and you go together?—Into a room at Hayman's house.

When you came there, what was said?—Binns requested a passage for Flushing.

What answer did you give him?—I told him there was not any probability at present, it might be a month or two months, I could not in fact tell when there might be. He said could not he go to Calais.—I told him no one there would run the risk of going to Calais. I before this had observed that the boat or the party might be detained; he said he did not conceive there was any danger of that.

Did he say where he was going from Deal?—He said he was going to Margate.

Did he mention for what purpose he was going to Margate?—He said he had a portmanteau, or two portmanteaus and a saddle.

Did he say what he was to have done with them? No farther than Hayman's telling him he was welcome to send them to his house, that he would put them into his warehouse, and take care of them.

Was any thing said about the price in your presence?—Not a word.

Was any thing farther said upon the subject?—Not another word; that was all that passed, the man then went away.

Did Hayman go with him?—No, he went away by himself.

William Jones sworn.—Examined by Mr. Solicitor General.

You are, I believe, a waiter at the Three Kings at Deal?—Yes.

Do you know either of the prisoners at the bar?—Yes, Mr. O'Connor and Mr. Binns.

Do you remember their being at your master's house?—Yes.

When?—The 26th of February.

What day of the week was that?—Monday.

What time did they come there?—In the evening, between five and six, to the best of my knowledge. I showed them into a room.

Did you see them when they came in?—No, I did not, but I attended on them.

How long did they stay there?—That night, and part of the next morning.

At what time did they go away?—Between the hours of ten and eleven, as near as I can recollect.

Did they say where they were going?—No.

How did they go away?—On foot.

Look at that book; have you seen it before?—Yes, it was left in the room they sat in.

Was any thing said to you about that book?—One of the gentlemen told me to take care of the book, they should be back again presently.

Did they ever return?—No.

Mr. Hugh Bell sworn.—Examined by Mr. Attorney General.

You live, I believe, in Charterhouse-square?—Yes.

You are a merchant in the city of London?—Yes.

Do you know the gentleman at the bar, Mr. O'Connor?—I have known him for a long time past.

Do you know the person who sits next to him (O'Coigly)?—Yes.

Do you know any other of the prisoners?—I know Mr. O'Connor's servant (Leary), and I have seen Mr. Binns once or twice, but have no intimacy with him.

Where did you see Mr. Binns?—Once or twice at my own house.

Did he come there to call upon you, or upon any body else?—He came certainly to call upon Mr. O'Connor.

Was Mr. O'Connor in the habit of dining occasionally with you?—Yes, frequently.

And sleeping at your house?—Occasionally sleeping at my house.

Did he dine with you on Saturday the 24th of February last?—To the best of my recollection he did.

Did any other of the prisoners dine with you upon that day?—I do not recollect that any other of them dined with me on that day.

Did a person of the name of captain Jones dine with you on that day?—He might have, but whether he did or not I do not recollect; he dined at my table twice, but whether that was one of the days I do not recollect.

How long is it since you have forgot that?—I do not know that I have forgot it; I did not say that he did not, but I do not positively recollect that he did; if I recollected accurately that he had, I should say so.

Did he dine with you within that week?—I rather think he did, he dined twice with me I know.

In company with Mr. O'Connor?—In company with Mr. O'Connor.

Was he introduced to you by Mr. O'Connor?—Certainly only by Mr. O'Connor.

By what name was he introduced to you?—By the name of captain Jones.

Did Mr. O'Connor tell you that his name was captain Jones?—To the best of my recollection he did.

Have you any idea that any body else ever told you that his name was captain Jones?—No.

Have you any doubt that Mr. O'Connor told you his name was captain Jones?—I have no doubt but that was the name by which I knew him.

And they dined twice together with you, you say?—They did so.

How lately, before Mr. O'Connor left London, did he dine with you?—I before said, that I cannot be accurate whether it was Saturday the 24th.

Was it upon a Saturday?—I cannot recollect, because the whole of captain Jones's calling at my house did not exceed ten or eleven days.

He did call in the course of the ten or eleven days before Mr. O'Connor left you?—Yes, he did.

How often might he call at your house in the course of those ten or eleven days?—I cannot say, because I am very much abroad.

I am not asking you what you do not know, but what you do know of your own knowledge?—To my knowledge he called four or five times.

Did he call upon you, or upon Mr. O'Connor?—Upon Mr. O'Connor.

How often did he dine in company with Mr. O'Connor at your house?—Twice.

Do you mean to tell the jury that you cannot recollect in what part of those ten days it was these two dinners were, whether the beginning, the middle, or the end?—The first time he dined was the first time I saw him; the second time I do not know whether it was the last day or not.

Will you take upon yourself to say it was in the middle of the time?—I will not.

Will you take upon yourself to say it was not upon the last day?—I will not; I said so before.

Did you direct any letter, at the instance of Mr. O'Connor, upon Saturday the 24th?—Not that I recollect.

Look at that direction, is not that your hand-writing?—It is.

At whose instance did you write that address upon that letter?—That I cannot tell.

Mr. Bell, you are a merchant in Charterhouse-square; you have directed a letter, which bears date the 24th of February, to Mr. William Williams; do you mean to say you cannot tell at whose instance you directed it?—I do, for I have no recollection of directing it at all, nor should I know that I ever had directed it, but that I know my own hand-writing.

You mean to swear, that if it was not for its being your own hand-writing, you should have no recollection that you ever directed it?—Positively.

You do swear it is your hand-writing, and that you did direct it?—Yes, from its being my hand-writing.

Have you any correspondent of that name?—None.

Why, Mr. Bell, have you never said at whose instance you directed it?—I never have.

You, however, did direct that letter?—I directed it.

Pray, Mr. Bell, do you know a person of the name of William Williams?—I do not.

Do you mean to say, then, that you addressed that letter "Mr. William Williams, Fountain-inn, Canterbury," so lately as February, 1798, but that you have not the least recollection how you came to address that letter?—I direct a great many letters every day

of my life, and if this letter, or any other, was brought to me by a servant, or any body else, to direct, I should do it with a great deal of pleasure, and it would make no impression, probably, upon me; in this case it has not.

Mr. O'Connor left your house on Sunday morning?—I did not see him on Sunday morning.

Did not he sleep at your house on Saturday night?—I believe he did.

Do not you know he did?—I was a-bed before him.

Have you any doubt about it?—No.

Upon your oath, do you know where Mr. O'Connor was going from your house?—I understood that he was going into Kent.

I ask you if you did not know it from Mr. O'Connor himself?—Yes, Mr. O'Connor told me he was going into Kent.

Why did not you say so then?—I think the word *understood* was sufficiently expressive of that, because I did not accompany Mr. O'Connor.

Did Mr. O'Connor's baggage go from your house?—I believe it did.

How was it directed?—I do not know.

Did any baggage go from your house directed "Colonel Morris"?—Not to my knowledge.

You admit, however, that that direction is your hand-writing?—Yes.

Whom is it directed to?—"Mr. William Williams, Fountain-inn, St. Margaret-street, Canterbury."

Had you any letter from Mr. O'Connor between the Sunday and the Wednesday?—To the best of my recollection I had a letter from Kent.

What is become of it?—I have it not.

Do you know what became of it?—I believe I destroyed it; the purpose of the letter was served by my reading it.

Is it destroyed?—It is.

If it is destroyed, what name was at the bottom of it?—James Wallis.

How do you know that that letter, which was signed James Wallis, was a letter from Mr. O'Connor?—I only concluded so from the subject of it, and the matter of it.

Did Mr. O'Connor tell you, before he left London, that he would write to you?—I really do not recollect that he did; I might wish to hear from Mr. O'Connor, but I do not recollect that he promised to write to me.

Did you destroy that letter yourself, or give it to any body else to destroy?—The letter was destroyed before I knew of Mr. O'Connor's being taken into custody.

Did you destroy it yourself, or did you give it to any body else to destroy?—I destroyed the letter myself.

Why did you destroy it?—Because the letter was of no moment, of no use, it merely informed me of his being in Kent.

Mr. Plumer.—What signifies what his reason was, that is no evidence against us.

Mr. Attorney General.—He says he re-

ceived a letter between the Sunday and the Wednesday, which letter was signed James Wallis, which he knows to be from the prisoner, and which he destroyed.

Mr. Justice Buller.—Did you know any person of the name of James Wallis?—No; I knew no other person of that name but a servant of mine.

Mr. Justice Buller.—You do not know whether either of the prisoners went by the name of James Wallis?—No.

Mr. Attorney General.—Then how came you to say that that letter signed James Wallis came from Mr. O'Connor?—I knew by the subject and the matter of it.

Did you know the hand-writing of that letter which you received, signed James Wallis when you received it?—I was so satisfied with the subject, and the matter, that the hand-writing made no sort of impression upon my mind.

Have you any doubt whose hand-writing it was?

Mr. Plumer.—I conceive he must state facts, not whether he apprehended it was his hand-writing or not.

Mr. Justice Buller.—The letter is destroyed, he may state his reasons for thinking it Mr. O'Connor's hand-writing.

Mr. Dallas.—Even if the letter is destroyed, I submit that he is not at liberty to state this, I admit that he is at liberty to state the contents of that letter, we have got the contents of the letter.

Mr. Justice Buller.—He has not stated, in words, what the contents were, but he has told you, from the subject of it, that he had no doubt it came from Mr. O'Connor.

Mr. Plumer.—That is merely matter of opinion: I conceive that saying he has no doubt of it, is not evidence; he may be convinced in his own mind, and have an opinion respecting a matter of fact, but that is not evidence.

Mr. Attorney General.—He says, from the subject and the matter of it, he has no doubt that it came from the prisoner.

Mr. Plumer.—That is nothing more than saying, that from the subject matter which he does not possess your lordship or the jury of, he draws a conclusion that the letter was written by Mr. O'Connor.

Mr. Garrow.—Mr. Plumer's objection is in a circle; first, he says you have not proved the contents, and therefore you cannot ask the witness to it; then he says, you cannot ask him to the contents without proving it to be his hand-writing.

Mr. Justice Lawrence.—Many things, for instance, a conversation, may be as decisive as the hand-writing; Mr. Plumer's objection is to asking his conclusion, instead of asking the contents of the letter, and so seeing that his conclusion is a just one.

Mr. Garrow.—Do not we prove the hand-writing of a man every day by the witness having corresponded with him, the subject matter leading him to it?

Mr. *Plumer*.—That is where the persons are in the habit of corresponding.

Mr. Justice *Buller*.—There is another thing, which my brother Shepherd has just suggested; supposing the letter had been here, could the witness speak to any thing but an opinion of its being the prisoner's hand-writing? he says the subject matter is such as would convince the mind of any reasonable man that the letter must have come from Mr. O'Connor; that takes it out of the objection; and if neither side will ask him to the subject matter, it stands thus: that you have not traced that fact so far as you might; that goes to the point of what credit the jury will give to the evidence, and not whether it shall be received or not.

Mr. *Plumer*.—I should make the same objection, if the letter had been here, to any question of what his opinion is, to any conclusion he draws from the contents; he may state any facts from which your lordship and the jury may draw that conclusion, but no private opinion is evidence.

Mr. Justice *Lawrence*.—What is opinion with respect to a man's hand-writing?

Mr. Justice *Buller*.—He has said, that he has formed that opinion from the subject and the matter of the letter.

Mr. Justice *Lawrence*.—From the hand-writing, and from the contents, he believed it to be Mr. O'Connor's writing; if you wish to see whether that belief is well founded, you may get that out in cross-examination.

Mr. *Attorney General*.—To whom was this letter, signed James Wallis, addressed?—Addressed to me.

Did you receive it by the post, or in any other, and what manner?—It came by the post.

You say you judge, by the contents of it, that it came from Mr. O'Connor, be so good as state what the contents of it were?—I cannot; my recollection does not lead me to state farther than that he was there, and in hopes of doing the business that he went upon.

Mr. Justice *Buller*.—He was there; what do you mean by there?—In Kent, where he wrote from.

Mr. *Attorney General*.—Do you recollect what post-town the letter came from?—That he was there, that he had met with a good man, to the best of my recollection, and that he would do the business.

Mr. Justice *Buller*.—Had you any conversation with him, before he left you, respecting any business which he was to transact in Kent?—Not that I recollect particularly.

Mr. Justice *Buller*.—Had you any conversation with him about any business?—I cannot say that I had about any business.

Mr. Justice *Buller*.—Then how came the expressions that he was in Kent, and in hopes of doing the business that he went upon, to bring Mr. O'Connor to your mind?—He mentioned in the letter that he had found a good

man to do the business for him; which business, I understood to be his desire of getting out of the kingdom.

Mr. Justice *Buller*.—Whom did you understand that from?—Mr. O'Connor.

Mr. *Attorney General*.—Leaving that subject, did you know the prisoner who sits nearest you (O'Coigly) by any other name than that of captain Jones?—I did not.

Mr. O'Connor had never mentioned him to you by any other name?—He did not till about the time of his departure; then I learned that his name was not Jones.

Where did you learn that?—I understood from Mr. O'Connor that his name was not Jones.

What did Mr. O'Connor say to you at the time you collected that understanding from him, that his name was not Jones?—To the best of my recollection, he mentioned that his real name was O'Coigly.

Did Mr. O'Connor tell you why he used the name of Jones?—I do not recollect any precise cause, but that he was a person who had come from Ireland on account of the state of politics in that country, and perhaps did not think it discreet to go by his real name, that was the only reason I conceived.

Did he mention whether he had any other name than the names of Jones and O'Coigly?—No; I never heard any other.

When was it that Mr. Binns called, was it within the last ten days?—Yes.

Did Mr. O'Connor sleep at your house at all, except within the last ten days?—Yes, he did longer than before the last ten days; he slept sometimes at my house, and sometimes at the west end of the town.

Did you happen to see Mr. Binns at all after Mr. O'Connor left you?—Yes.

When was that?—He called upon me on the Sunday morning of Mr. O'Connor's departure, and finding that Mr. O'Connor was gone, he went away himself immediately.

Had you any conversation with him when he called upon you?—No farther than saying Mr. O'Connor was gone.

What time in the morning did he call upon you?—I think about eight o'clock.

Did you supply Mr. O'Connor with any money?—I did.

To what amount?—Near to 400*l.* in Louis d'ors, but Mr. O'Connor had about 700*l.* altogether.

Does it fall within your knowledge whether Mr. O'Connor has made any conveyance of his estate before?—No.

Had you ever received a letter from any person before under the name of James Wallis?—Not that I recollect.

Had you ever directed a letter before to any person under the name of Williams?—I do not recollect; I may have, perhaps I have.

Have you any recollection of any servant of your's applying to you upon Saturday, the 24th of February, to direct such a letter?—I have not; I may have directed a letter for

what I know at my counting-house in Aldersgate-street.

Have you any recollection of any person applying to you at your counting house in Aldersgate-street to direct such a letter?—I have not.

Mr. *Hugh Bell* cross-examined by Mr. *Plumer*.

You have said that you have been acquainted with Mr. O'Connor since he came into England; when did he come into England this last time?—Early in the month of January.

And left your house the latter end of February?—On the 25th of February.

Do you know whether he had made any inquiries, or did he employ you to make any for him for the purpose of going abroad before Mr. O'Coigly came into this country?—Certainly he had.

When was that?—The latter end of January, perhaps between the 25th and 28th.

Did not Mr. O'Coigly come to town about the middle of February?—I do not know when he came to town, I never saw him till the middle of February, and I never saw him out of my own house.

And before that time you knew Mr. O'Connor was going abroad?—I did.

Did you yourself make inquiry for a vessel for him for that purpose?—I did.

For what place?—He wished to go to Hamburg first.

That was, I think you say, the latter end of January?—Yes.

Did you in consequence of that, endeavour to procure a vessel for Hamburg for him?—I did.

What prevented your getting one?—There were vessels for Hamburg, but they were delayed, as well as I can recollect, owing to the apprehensions that the French were very nearly getting possession of that place, and that delayed the vessels from sailing.

English vessels were afraid of going there?—Yes.

I believe there was a time when there were six mails due from Hamburg?—Besides, the English vessels for Hamburg at that time sailed by convoys, and a convoy had sailed I recollect very nearly before.

Do you happen to remember the circumstance that there were at one time six mails due from Hamburg?—I recollect there were several mails due; I do not recollect the precise number; I got him the bill of a ship and gave it him; but I understood one reason why Mr. O'Connor hesitated about going by that ship was, the necessity that I told him, I believe, there was for a passport, which passport, I understood from himself, he could not obtain, or had doubts of obtaining.

Why could not he procure this passport?—I really do not know, farther than that his situation, as a public man in Ireland, might make it difficult to obtain it here from government.

Did you know that he had recently come from Ireland in the beginning of January; I did; he had called at my house before I saw him, and he called some two or three days after, and dined with me.

Did you inquire for any other vessel besides the Hamburg vessel; did you inquire for a vessel for Embden before ever you saw Mr. O'Coigly?—Yes, before I saw him; for I never inquired after.

Were you able to obtain one?—There was a vessel for Embden, but it was to sail very soon, and to the best of my recollection Mr. O'Connor could not be ready; it was in one, two, or three days, it was to sail.

You have been asked by the attorney-general, about these Louis d'ors; do you know whether Louis d'ors are the coin best for circulation upon the continent at this time?—I know nothing of that fact, I believe they are in circulation.

Is that a coin which would be most convenient for a gentleman travelling on the continent?—I so understood; but I was never on the continent myself.

At the time you got them, was there a discount upon the Louis d'ors?—The Louis d'or appeared to me, at that time, comparing the Hamburg exchange, to be a good remittance at nineteen shillings.

That is a profit of five per cent?—That depends entirely upon the state of the exchange.

You have been asked about what Mr. O'Connor told you respecting Mr. O'Coigly; did he not at the same time tell you that this gentleman was under the necessity of leaving Ireland, that he was a fugitive from Ireland like himself, and was going out of the kingdom?—He did so.

Did he not also inform you that there were reasons why neither that person nor he could stay in Ireland nor in England, with respect to themselves?—With respect to Mr. O'Coigly he did not go that length, but he did with regard to himself; that he left Ireland because he was threatened, as he understood, with a second imprisonment there.

You told Mr. Attorney General that you understood Mr. O'Coigly came from Ireland on account of the state of politics in that country, and did not think it discreet to go by his own name?—I did.

Did you know of Mr. O'Connor's belonging to any English society, or connecting himself in any respect with English politics, whilst he was here?—No; I did not know the least thing of the kind.

Did he belong to or frequent any society or club in his life?—Not to my knowledge.

Mr. *Hugh Bell* re-examined by Mr. *Attorney General*.

Did Mr. O'Connor mention or not mention that he was going out of the country with any persons, and whom?—At the time that he went into Kent, I understood that Mr. O'Coigly was to accompany him, that he

wished to do so; and that Mr. O'Connor had consented.

Did Mr. O'Connor inform you when Mr. O'Coigly sailed from Ireland?—He never informed me any thing about Mr. O'Coigly's arrival from Ireland till I saw him in my own house.

When was that?—About the middle of February.

Had you any conversation afterwards with Mr. O'Connor as to the time at which Mr. O'Coigly came from Ireland?—I understood he had come some very few days before, two or three days before, as Mr. O'Connor told me.

Did Mr. O'Connor, in his conversation with you, tell you whether Mr. O'Coigly had come from Ireland, or from any other country?—I understood from Ireland.

No other country was mentioned, was there?—No other country was mentioned.

You have spoken about the exchange at Hamburgh; do you mean to say that the state of the exchange with Hamburgh was such as to make that an advantageous bargain you made in February?—I so understood it.

Do you know what the state of exchange was at that time?—I do not know; but I could tell if I was at home.

Was it not above thirty-seven?—I do not know precisely the calculation I made of the interest of money.

Has it been at less than thirty-seven for the last six months?—I am not much in the Hamburgh trade, or conversant with the Hamburgh exchange, but the calculation I made at the time led me to suppose *louis d'ors* would be a good remittance.

If the exchange was at thirty-seven, could it be a good remittance?—I think it might for a gentleman; a traveller, if he takes bills, he must necessarily have them discounted, and that might not be so convenient.

That is your reason then for saying that the remittance appeared to you to be advantageous; now I ask you, upon your credit as a merchant, do not you know that remittance by bills, when the exchange with Hamburgh is thirty-seven, is advantageous?—Valuing the *louis d'or* at nineteen shillings, I do not know that.

Do you mean to say you do not know that?—I do not; to be sure it would require a little operation and working that I cannot go through here.

How long before Mr. O'Connor left you was it that the vessel was about to go to Embden?—It was early in the month of February.

Do you remember the name of the vessel?—No.

Do you remember the master of the vessel?—No, I do not know that I heard the name of the vessel; she was mentioned to me by a friend of mine in the city.

Was not her name mentioned, nor the time of her sailing mentioned?—The time of her

sailing was mentioned, and that made it not necessary for me to inquire the name.

Who was your friend that mentioned it?—Mr. Cleggit.

You had been employed to look out for such a vessel?—Mr. O'Connor had desired me to inquire for such a vessel.

Mr. Plumer.—I beg to ask this question; did you ever hear any thing from Mr. O'Connor about any paper that he was going to take with him abroad; did you know or hear of any paper of any kind whatever?—Never.

Did you know of any business that he was going upon with Mr. O'Coigly?—No business whatever.

Did you know of any business they had together that they were going about?—No other than to leave the country.

Mr. O'Connor.—I beg to ask a question; when Mr. O'Coigly called upon me at your house, did there appear to be any intimacy between Mr. O'Coigly and me?—No; I understood you were totally unacquainted with him until the time you met in London.

Mr. O'Connor.—Did I not tell you it was but a day or two before that I had ever seen him?—Yes.

Mr. O'Connor.—Did I not mention to you that he called upon me as an Irishman in a distressed situation, and that he had come from Ireland as a persecuted man?—As an Irishman that was under that sort of apprehension for his personal safety in Ireland, that made it necessary for him to come here; you did so.

Mr. O'Connor.—Do you think it was in my power—

Mr. Justice Buller.—Do not ask him what he thought, but ask him to facts; you had better suggest your questions to your counsel, they will put any question for you.

Mr. O'Connor.—Have I not told you that too many of my countrymen called upon me, and I wished to avoid making acquaintance?—I have heard you make that observation.

Mr. O'Connor.—Have I often told you that I was particularly cautious of forming any new acquaintances in England, especially in the political line; indeed, that I was determined not?—To the best of my recollection you have made such remarks to me.

Mr. O'Connor.—Did I tell you that nothing could induce me to form any sort of connexion with any political society in England?—I do not recollect these precise words, but I understood from you that you were determined to be very guarded in your conduct in England.

Mr. O'Connor.—Had you any reason, from anything you heard me say, to suppose that there was any sort of intimacy between Mr. O'Coigly and me, that I should commit myself in any dangerous way with Mr. O'Coigly?—I understood not, but that he was entirely a new acquaintance.

Mr. O'Connor.—Do you believe that I had any other object in having Mr. O'Coigly with me, than from a good-natured motive to re-

lieve a distressed countryman, from what I told you in confidence, as a friend?—No motive whatever, except the desire you might have, from good nature, to assist him.

Mr. O'Connor.—I will put it stronger. Did I not tell you I was averse to it?—Yes, you lamented it.

Mr. O'Connor.—Lamented, that I was grieved I had allowed Mr. O'Coigly to go with me out of the country?—Yes.

Mr. O'Connor.—Did I assign any reason for that?—Yes, you assigned a reason, you were afraid Mr. O'Coigly had been very indiscreet in mentioning your intention of going out of the country.

Mr. Justice Buller.—Mr. O'Connor, do not you see how much this is at the expense of the other prisoner?

Mr. Attorney General.—We will now read the letter addressed to Mr. William Williams.

[It was read.]

"Dear Friend;—I set off to-morrow morning in a Whitstable hoy, and hope to be at Whitstable by night, if the wind is fair. I shall take all the parcels you speak of with me. Your's sincerely,
JAMES WALLIS.

"I get your letters.

"London, 24th Feb."

Addressed, "Mr. William Williams,
Fountain Inn, St. Margaret-street,
Canterbury."

James Morris sworn.—Examined by
Mr. Garrow.

You are a porter to Mr. Bell, I understand?—Yes.

Do you live at his house in Charter-house-square, or at his warehouse in Aldersgate-street?—At his warehouse.

Do you remember, on the 24th of February, carrying any quantity of luggage from Mr. Bell's house to Chester quay?—Yes.

Were they packages of this sort that are upon the table?—Yes, deal boxes of this sort.

Were you assisted by another person?—Yes.

How were they directed?—I did not take notice.

I observe some of these that are upon the table are directed "Colonel Morris;" did you observe how any of them were directed?—I did not take notice of that.

Can you read?—Yes.

Be so good as to look at that direction, and tell me whether such a direction as that was upon the packages?—It might, but not to my knowledge.

Were they directed some of them upon cards like that?—I am not certain.

They were directed?—I am not certain as to that.

Where there either cards or papers upon the boxes, upon which a direction was either written or might be written?—There might; but it was the dusk of the evening when I took them.

By whose direction did you take them?—Mr. Bell's servant.

To what place did you take them?—To Chester quay.

To go by what conveyance?—By a hoy; I believe the Whitstable hoy.

Did you deliver them at the quay, or to the people of the hoy?—To the people of the hoy.

By what directions?—The people in the hoy took the care of them.

Did you accompany the people to the hoy next day?—No.

And you saw no more of them?—No.

James Wallis sworn, examined by Mr. Adam.

Do you live with Mr. Bell?—Yes.

Do you know Mr. O'Connor?—Yes.

Did he visit your master frequently?—Yes.

Do you remember captain Jones coming there?—Yes.

Do you see a person at the bar that passed by that name?—Yes.

Which is captain Jones?—That person (O'Coigly.)

Do you remember captain Jones and Mr. O'Connor dining at your master's house the 24th of February, the day before Mr. O'Connor went away?—Yes.

Did captain Jones go away soon after dinner?—Yes.

Do you remember Mr. O'Connor and Leary his servant leaving your master's house early on the Sunday morning?—Yes, I do.

Did you accompany them to the hoy?—Yes.

Where to?—Towards the Tower.

Did you go on board the hoy?—I did, with them.

Had you gone with the luggage the day before?—No.

You went with them and such packages as they had on the Sunday morning?—Yes.]

Do you remember any other persons coming on board the hoy while you were there?—Yes.

Where did you first see them?—In a vessel in the river.

Whom did you see in that vessel?—Captain Jones I knew.

The same person you have pointed out now?—Yes.

And whom else did you see?—Colonel Morris.

Do you see him at the bar now?—Yes (Mr. O'Connor).

Did they come from on board that vessel to the hoy?—Yes, in a small boat.

You came on shore again and left the hoy?—Yes.

Was that the last you saw of them?—Yes.

Do you know any of the other prisoners at the bar?—No.

Did you ever see the person that sits next O'Coigly?—No.

Do you know how Mr. O'Connor's baggage was directed?—No.

James Wallis cross-examined by Mr. Dallas.

I believe you know that Leary is Mr. O'Connor's servant?—Yes.

You know that he has been so from the time almost that he was a child?—I cannot say that.

But as long as you have known Mr. O'Connor, has Leary been his servant?—Yes.

How long have you known Mr. O'Connor?—I never knew him till the last time that he was in England.

Elizabeth Smith sworn.—Examined by Mr. Abbot.

Where did you live in February last?—At No. 14 Plough-court, Mr. Evans's.

You had the first floor at Mr. Evans's house?

—Yes, me and my husband.

Do you know either of the prisoners?—Yes, Mr. Binns, Mr. Allen, and captain Jones.

Where have you seen them?—In the same house that I lived in.

Which do you mean by captain Jones?—This is captain Jones on this side (O'Coigly): that is the name I know him by.

Had either of them a lodging in that house?—Yes, Mr. Allen had.

How long did he lodge there before he went away?—For eleven days, I think.

Had Binns a lodging in that house?—He occupied his brother's apartments.

Do you recollect the day that Binns went away?—I do not recollect.

Do you recollect the day that Allen went away?—It was on a Saturday evening.

Do you know whether captain Jones was at that house that evening?—He was at that house in the afternoon; because he saw me on the stairs, and spoke to me.

Do you know whether they slept in that house on that night?—I cannot say, Mr. Allen left my apartment and went up stairs.

Did you see them in the house at bed time?—No; he left my apartment, and went up stairs.

He did not sleep in his own apartment?—No.

Do you happen to know who slept in Mr. Binns's apartment that night?—Captain Jones and Allen.

What reason have you to suppose that?—Captain Jones has slept there, and used sometimes to sleep there with Mr. Binns; I have seen them go up stairs together to go to bed.

Did you see captain Jones go up stairs that night to go to bed?—No; I saw him in the afternoon.

Mr. Justice Buller.—I thought you said just now he went away on Saturday evening?—Allen left my apartment on Saturday evening, and went up stairs.

Mr. Justice Buller.—Why do you suppose that captain Jones slept there that night?—Because he has slept there before with Mr. Binns; I have seen him go up stairs to bed.

Mr. Justice Buller.—Did he that night?—I cannot pretend to say that; I saw him in the house that afternoon.

Mr. Abbot.—Did you hear from him whether he meant to sleep there?—I did not.

Had you ever seen captain Jones before last February?—Yes, about five weeks before.

What name did he go by then?—I do not know; that was the first time I saw him.

Did he tell you where he was going then?—No.

You do not know what name he went by when you saw him first, but when he returned, he went by the name of captain Jones: what dress was he in?—In blue regimentals.

Was he in regimentals when you first saw him?—No.

Can you tell whether any persons went out of the House early on the Sunday morning?—I do not know; I did not see him any more.

Elizabeth Smith cross-examined by Mr. Plumer.

You say you had seen Mr. O'Coigly only once before and then you did not speak to him?—No.

How long that was before the last time you had seen him, you do not exactly recollect; it might perhaps be two or three months?—No, about five weeks.

What makes you know it was only five weeks?—From my own recollection.

Does any particular circumstance enable you to fix the time?—No.

Did you understand that he had been to Ireland in the intermediate time, when he came back again?—Yes.

When did you first see him come back? was not it about ten days before he went away on the Sunday?—It was about ten days before he last set off.

Elizabeth Smith cross-examined by Mr. Ferguson.

Did Allen occupy an apartment to himself?—No, all three of them lived in the same room.

How much did they pay a week for this room?—Seven shillings and sixpence.

Have you reason to know how long Allen had been in London?—No; I only know that he came to lodge there, and that he lodged there eleven days.

John Richardson sworn.—Examined by Mr. Garrow.

Did you officiate as a watchman in Plough-court, where Evans lives, on Saturday night, the 24th of February?—Yes, I did.

Were you desired to call at that house at an early hour in the morning, to call some persons up?—I was desired by a man to call him up at five o'clock in the morning; I knocked at the door at five o'clock.

Did you see the people that went out?—I did not.

Richard Smith sworn.—Examined by Mr. *Garrow*.

I believe you are master of the *Thomas* and *Stephen* hoy from London to *Whitstable*?—Yes.

Do you remember upon the evening of *Saturday* the 24th of *February*, any places being engaged in your hoy for the next morning?—There were some packages came on board about ten o'clock in the evening of *Saturday*.

What sort of packages were they?—Boxes and things.

Were they like these upon the table?—Yes.

Were they numbered?—Some of them, but not all.

Did the next morning any person who is now here come to your hoy?—Yes, those four (pointing out *Mr. O'Connor*, *Allen*, *Leary*, and *O'Coigly*).

Did they bring any packages with them in the morning?—Yes.

Who brought them?—*Mr. O'Coigly* brought some.

What sort of packages were they?—They brought some of these, some came over night, some came with them next morning.

Did all these four persons sail with you?—Yes.

How were the packages directed?—To *colonel Morris*.

Had you any conversation with any of those persons whilst they were on board the hoy?—Nothing more than their asking me what places we came by; that was all that passed between us.

Did you pass *Gravesend*?—Yes.

Had you any talk about *Gravesend*?—They asked me whether my vessel would be overhauled at *Gravesend*?

Which of the gentlemen said that to you?—They were all together, one of them asked that question; I said no, we never were in going down, unless there was some particular occasion.

What time did you arrive at *Whitstable*?—About six o'clock.

How were your passengers carried out from the hoy at *Whitstable*?—*Mr. O'Connor* and *Mr. O'Coigly* went in a boat together with other passengers; some of the packages were taken out by them that night.

Did you carry the little things?—No, I offered to carry some, but *O'Coigly* said no, they would carry them themselves.

When did you land the rest of the things?—About an hour after.

Where did you take them to?—We carried them to the inn, and left them there.

Who was there then?—*Mr. O'Coigly*.

Who paid you?—He paid my master.

Did he pay for all, or only his own share?—He paid for all.

Did either of the persons who were your passengers upon that trip wear a great coat with a black collar?—I think I can tell the man that wore that coat.

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Who wore that coat?—The stout gentleman, *O'Coigly* had that coat on, and he wore a hairy cap.

A cap of this sort (showing it the witness)?—Yes, a cap of that sort, and a great coat of this kind.

You have seen the great coat since these persons were apprehended?—Yes.

Did you know it to be the great coat *O'Coigly* wore in that trip?—Yes, and I have two pieces I cut out of it.

Richard Smith cross-examined by *Mr. Dallas*.

When did you mark that great coat?—When I was in London.

How long was that after *Mr. O'Coigly* was on board the hoy?—I cannot say rightly.

Was not that great coat produced to you by some person in London, as the great coat that *Mr. O'Coigly* had in the hoy?—It was brought to me to say whether it was?

Was it brought to the house where you were, to ask you whether that was the great coat *Mr. O'Coigly* had in the hoy?—Yes.

Was it produced to you singly, or with any other great coats?—It was in the room when I went in.

You never saw him before the day when he was on board the hoy?—No, not to my knowledge.

And you saw him at *Whitstable* the next day?—Yes.

At what o'clock did *Mr. O'Coigly* come on board the hoy?—Between six and seven; he and *Mr. O'Connor* came together, or nearly at the same time, I did not observe it particularly, it was as near as can be at the same time.

Were you present when the baggage was searched at *Whitstable*?—I was in the room.

The boxes were broke open and searched there?—They were opened and searched there.

By whom?—By the king's officer there, *Mr. King*.

How long was this after they arrived at *Whitstable*?—That was on the Monday night; we got there on the Sunday night.

What place in London was it where you saw this great coat in the room, and pitched upon it as the one *Mr. O'Coigly* had worn?—The Secretary of state's office.

As soon as you saw it, did you fix upon that as the one he wore?—Yes, and told the gentlemen there so.

Have you any doubt now about it?—I do not think I have.

The gentleman asked you how soon it was after you had seen these persons at *Whitstable*; can you tell how soon it was?—I cannot tell, it was within three or four days.

Stephen Perkins sworn.—Examined by *Mr. Adam*.

I believe you keep the Bear and Key at *Whitstable*?—Yes.

Do you remember on Sunday the 26th of February last, any of the persons you see at the bar, coming to your house?—Yes.

Which of them?—One was called colonel Morris, and the other captain Jones, but I do not know which was called which, the two others passed as servants.

About what time of day did they arrive?—About four in the afternoon.

Did they dine there?—Yes.

Did they stay all night?—Yes.

How were they accommodated as to beds?

The two gentlemen slept in a two bedded room, the two servants slept in one single bed in a room over my tap room.

Mr. O'Coigly and Mr. O'Connor slept in a two bedded room?—I do not know what their names are, but one passed for captain Jones, the other for colonel Morris.

Did they all breakfast at your house the next morning?—No, I went out before they were stirring, and one of the gentlemen went out of the door, and went up street from the house, the other gentleman stopped, as I understood from my wife, and breakfasted.

You must not mention what you understood from any body else?—I did not see him breakfast.

How do you know that one was called colonel Morris, and the other captain Jones?—I heard the company in the tap room speak it from their servants.

Was their baggage brought on shore that night, or the next morning?—The baggage brought that night was two or three small boxes.

Was any baggage brought next morning?—No.

Did Mr. O'Connor and O'Coigly breakfast next morning?—No, Mr. O'Connor went up the street, and I never saw him at all that morning, nor never again.

Mr. O'Coigly remained during the greater part of that day?—Yes, all the Monday.

Was the baggage brought on shore on Monday?—Yes, in the evening.

Did they propose to go from thence to any other place?—When the baggage was brought on shore, that gentleman, Mr. O'Coigly, told me he had agreed for a young fellow to carry him to Margate in his boat, and he disappointed him, and told him he could not carry him that night, and would carry him next morning, and he asked me if I could accommodate him with a boat to carry him to Margate, I told him I would do the best I could, I called a young fellow in, that was in the tap room, Edward Ward, and asked him if he could take the gentleman, and his baggage, down to Margate; he asked him a guinea and a half, Mr. O'Coigly did not like to give it.

Did O'Coigly make any enquiry about the baggage being searched at the Custom-house?—When the baggage was brought on shore, it was searched by the king's officer; after it was searched they all went out of the room,

and Mr. O'Coigly asked me whether there was any danger of being searched at Margate, I told him yes, I dared say there was by the searching officer; I said I fancy I can tell you the reason that you was searched here; he asked me thereupon, I said, did not you ask the boyrnen whether there was any danger of being searched at Gravesend, he said yes; I said that is the reason then that you was searched here by the information of the boyrnen.

What time did they leave your house next day?—In the morning.

How was the baggage carried?—By a cart.

Whose cart?—One Thomsett's cart.

Did Thomsett accompany the cart?—He went with the cart himself from my house.

Who went along with the cart?—The two servants, Allen and Leary, and O'Coigly.

Was all the baggage put in the cart?—Yes.

They set off from your house to go to Margate?—Yes.

Had you any conversation with O'Coigly about going to Dover?—I went in after they had done searching; I said it is a very disagreeable piece of business to have a person's goods torn about in that manner; I said this to O'Coigly, he made answer to me it was; I asked him whether he wanted to go on the other side of the water, he made me answer no he did not; I asked him whether he had any correspondents at the other side of the water, he told me he had acquaintance at Amsterdam; I made answer again that I was going to Dover, and if I could be of any service taking a line for him I would take one with me, as there were neutral vessels lying in Dover harbour.

Did he give you a letter?—He said he should be much obliged to me, and he gave me a letter; this is the letter he gave me.

Did you go to Dover?—Yes, I carried the letter to Dover.

How came you to have the letter now?—I said, if there is no convoy from Dover, where shall I direct this letter to you again; the answer he made me was, it was of no consequence.

Were you present when the agreement was made with Thomsett for the cart?—I was; a guinea was the money agreed upon, I think.

[The Letter read.]

Whitstable, February 26, 1798.

"Dear Sir; Happening by accident to be here, and hearing of a general embargo laid on all vessels in the Dutch ports, and a seizure of our merchandize there, I wish to be informed exactly by you, the more so as I am obliged to attend my duty as a military man at present, and my partner has a quantity of goods, just ready to ship, and consigned to you. This will be sent over by a careful hand, and the sooner you answer it the better for both parties; because, if your answer should be favourable, we shall ship, perhaps, a treble

quantity. Direct, in all haste, to Parkinson and Co. High-street, Manchester. We are very uneasy about the safety of the last parcel we sent over. Lose no time, I pray you. In the mean while I am, Yours sincerely,

"EDWARD WALLACE."

Addressed to "Mynheer Van Solomon, Straet Van Hacolem, Amsterdam."

Stephen Perkins, cross-examined by Mr. *Plumer*.

What part of the day was it when the luggage was searched by King?—On Monday evening.

There was Mr. Smith, and the revenue-officer, Mr. King, and another person?—The people belonging to the hoy came ashore with them.

They were some time searching them?—They were some time; there were several people standing at the door to see them searched, I did not.

This King, and the other men, expected to find something, they had ordered a bowl of punch at your house?—That I do not know; I did not send for them.

You told Mr. O'Coigly the reason why he was searched, and that he might expect to be searched again at Margate?—Yes, there is no goods go on shore, from the quay at Margate, without being searched.

You said both these gentlemen slept in the same room; you had but one room, I believe, to accommodate them with?—There were two beds in one room.

You had no other room to sleep them in?—No; they asked for two rooms I think, but I had no other beds fit for any gentlemen to sleep in.

John Dyason sworn.—Examined by Mr. *Garrow*.

You are nephew, I understand, and servant to Mr. Perkins, who has just been examined?—Yes.

Did you sleep in the next room to the two-bedded room, on the night the gentlemen slept there?—Yes.

Did you see the gentlemen before they went to bed?—No.

Did you hear any thing passing in that two-bedded room in the course of the night?—In the morning, before I got up, I did.

What did you hear passing?—They passed and re-passed my door, and I heard some money told in the two-bedded room.

From the length of time that it was counting, did it appear to be a pretty large quantity?—It was some considerable sum, I cannot tell the quantity.

Did you hear any expressions whilst they were counting the money?—Yes, I heard them read writing, I cannot tell what; I heard a pen go; I heard there was somebody in the room writing; I heard one say to the other, that it was wrong, they must write something else, but I could not tell what.

John Dyason cross-examined by Mr. *Dallas*.

You are a waiter in this house; did you listen at the door?—No.

I hope you did not: Do you mean to swear, that without listening at the door you heard a pen go; look at the jury, and tell them that, upon your oath; without listening at the door, do you mean to tell the jury that you heard a pen go?—Yes.

Mr. Garrow.—What is the partition constituted of between the two rooms?—The partition between the two rooms is wainscot, part of the way up, and then above it an open lattice work.

Therefore, without getting up to listen, you heard it?—Yes, I heard it as I lay upon my bed.

Mr. Garrow.—I will just call Mr. Perkins back, to hear whether what this witness represents of the lattice-work is true.

Stephen Perkins called again.

What is the partition between the room in which Dyason slept, and the room in which these two men slept?—Lath and plaister; there is a passage goes by this young fellow's room with a thin partition, and the head of his bed comes against the head of one of the beds in the other room.

Is the lath and plaister a close partition up to the top?—Yes, it is up to the top in that part, but it is open in the passage-way to the door, for about sixteen inches; it is an open railing above the pannel.

Is there any thing there to prevent the sound being heard from one room to the other?—No; if you lay in that room, you can hear any body moving in the other room.

John King, esq. sworn.—Examined by Mr. *Garrow*.

You are under-secretary of state to his grace the duke of Portland?—Yes.

Were you present when this mahogany money-chest was broken open at the Secretary of state's office?—Yes.

Did it require considerable force to break it open?—It did.

Did you, upon its being broken open, examine its contents?—I did.

Has it been sealed up since?—Yes, with the joint seal of Mr. Ford and myself; this is my hand-writing upon it.

Mr. Justice Buller.—You may open it.

[Mr. King broke the seal.]

Mr. Garrow.—What does it contain?—Louis-d'ors, double louis-d'ors, and guineas, and I think one or two half-guineas.

To what amount in the whole?—I believe something more than a thousand pound.

All in specie?—All in gold.

What proportion does the foreign money bear to the other?—I have a little memorandum I put in my pocket; the great bulk is, I think, in double and single louis-d'ors; this

bit of paper was in a bag with money, and there was a little bit of string; whether the string is now in it I do not know, but it tied this paper to the money, which was rolled up in brown paper.

A ticket to something like a rouleau?—Yes, this is the bit of paper, and this bit of paper was in the bag too, with marks of a sum of money, which accorded with the bit of paper, “97 guineas”; the ticket is “Captain Jones.”

Mr. Garrow.—Your lordship will observe there is something on this paper scratched out with a pen, which is perfectly illegible, and there is wrote “97 guineas.” Did you find any thing else?—Nothing but these rouleaus; in order to count them we opened all but three, those three are left in the state in which they were. I must observe, that the white paper in which we wrapped them up, is not the paper they were originally wrapped up in.

Did all the papers contain an equal number?—The rouleaus, in general, contained sixty louis-d'ors, and of double louis-d'ors about forty; there were four little ivory cylinders taken out of a small dressing-box, which also held guineas; Mr. Ford and I counted them out of this box, and we marked them. This paper was taken out of the dressing-box, I marked it at the time, it was then in the same state as it is now. [The paper was torn in several places.]

[It was read.]

“ommunicate write by
“Mr. William Williams, at the Fountain Inn,
“St. Margaret's-street, Canterbury, where I
“shall receive it to-morrow morning about
“o'clock. I have seen the person I
“expected, and procured two
“which he assures me”

On the other side is written,

“nature, and what was their business
“every person having answered those ques-
“tions, he was not particular or urgent upon
“any farther enquiries. Mr. Cornwall is
“employed by the D. of Portland, and was
“preceeded in his employment by a pers
“from the office of the Secty. I have
“made”

Mr. Garrow.—What we read it for is the direction, “Mr. William Williams, at the Fountain Inn, St. Margaret's-street, Canterbury.”

John King, esq. cross-examined by Mr. Plumer.

From whom did you receive the box to the contents of which you have been speaking?—The box, with the money, I received from Mr. Ford.

When?—I should suppose about the 6th or the 7th of March; it has been in my possession ever since, under the joint seals of Mr. Ford and myself.

Do you know where it came from when it was brought to you?—It was brought to me from Mr. Ford's room, which is over the office rooms.

Had you seen it in the room?—I saw Mr. Ford put it in a place he has in that room, and I received it from Mr. Ford.

Is there any other box you have spoken to but that?—Yes, a dressing-box.

Did you also receive that from Mr. Ford?—That was taken out at the time they were broken open in my presence.

Who had the other when it was opened?—It was delivered into the custody of Mr. Ford.

Who delivered it into his custody?—The messenger; I believe he was in the room when it was opened.

I understand they were both opened, and the contents of one box was put into the other?—Yes.

You have told us one box you had from Mr. Ford; do you know where the other came from?—They were both in the possession of Mr. Ford.

Mr. Garrow.—They were both in Mr. Ford's room in the Secretary of state's office?—Yes.

They were both broken open in your presence?—Yes.

And the money-chest delivered over to your keeping?—Yes.

And the other was put into Mr. Ford's keeping?—Yes.

Richard Ford, esq. sworn.—Examined by Mr. Garrow.

We have understood that you were present when this small money-chest was broken open at the Secretary of state's office?—I was.

Did you and Mr. King put your respective seals upon it?—Yes; first of all we marked it.

How did you become possessed of this small chest?—I received it from Fugion and Revett, in Bow-street.

It continued in your office, unopened, till it was broken open in the presence of Mr. King and you?—I ordered them to keep the box, and to bring it when I had them to re-examine; I did not break it open at that time; they were ordered, the next day, to the Secretary of state's office, and there the box was broken open in my presence.

There is a dressing-box likewise, in a black leather case; did you see that broken open?—Yes, I did.

By whom was that produced?—It was produced at Bow-street by Fugion and Revett, and kept by them till the next day, when they brought it to the Secretary of state's office.

I understand it has been in your custody ever since?—It has.

Richard Ford, esq. cross-examined by Mr. Dallas.

These boxes were brought by Fugion and

Revett to Bow-street; what became of them after they were brought there?—They were not opened in Bow-street: the prisoners were committed; I knew they would be re-examined, therefore I kept the boxes unopened; the matter was then communicated to the Secretary of state, who had been apprized of it before; he ordered them to be brought to his office, and there the boxes were broken open.

In whose custody did they continue?—In the officer's custody, locked up in a room at Bow-street.

Richard Ford, esq. cross-examined by Mr. Gurney.

The prisoners were brought before you immediately upon their arrival in town, prior to their being taken to the Secretary of state's office?—Yes.

Mr. Binns, when he was brought before you, acknowledged immediately that his name was John Binns?—He did.

Richard Ford, esq. cross-examined by Mr. Ferguson.

Do you recollect any money being stated by the officers to be found upon Allen?—I do not recollect it.

Mr. Plumer.—Mr. O'Connor told you his name immediately?—I asked him what his name was, he said his name was O'Connor.

Did Allen give you his name?—He did; and he said, what he had done was by his master's orders.

Mr. Garrow.—You have been asked whether Mr. Binns, upon being asked his name, did not immediately tell you his name, and whether Mr. O'Connor did not also tell you his name; I understand they both did; did you ask any of the prisoners whether they were acquainted or connected with each other?

Mr. Plumer.—Were the particulars of their examination taken down in writing?

Witness.—The particulars of the prisoner O'Coigly's examination were taken down in writing by myself, which I have got.

Mr. O'Connor's were not?—No, Mr. O'Connor declined answering any questions.

Edward Fugion called again.—Examined by Mr. Garrow.

Among the articles you secured and brought up to London, was this small heavy chest case?—It was.

Did you keep that in your possession till you got to Bow-street?—Yes.

Where did you take it next day?—To the Secretary of state's office.

Did you take it there in the same state in which you found it at Margate?—Yes.

Did you deliver it in precisely the same state at Mr. Ford's office?—I did.

Is this dressing-box one of the articles you brought up in the same manner?—It is.

Did you take that likewise to Bow-street?—I did.

During that night, whilst it remained in Bow-street, in whose custody was it?—Locked up in a dining-room, of which I had the key; it was carried unopened to the Secretary of state's office the next day.

Were you present when the boxes were opened?—I was only present when the little box was opened.

Was it opened with considerable difficulty?—There was a smith sent for to open it.

John Revett called again.—Examined by Mr. Garrow.

Did you assist in bringing this small chest to London, and the dressing-box?—Yes.

Did you keep them at Bow-street that night, in the same state in which you found them at Margate?—Just so.

Were they locked up there that night in the same state?—They were; I took them the next morning, in the same state, to the Secretary of state's office.

Had they been opened, from the time you found them at Margate, till they were opened by force at the Secretary of state's office?—They had not.

Jonas King sworn.—Examined by Mr. Adam.

You are coast-waiter at Whitstable?—Yes.

Do you know any of the prisoners?—I have seen them all before.

Do you know Mr. O'Connor, O'Coigly, Allen and Leary?—I saw them at Margate.

Did you see the other prisoner at Whitstable, on the 26th of February?—Yes; I did not see Mr. O'Connor there.

Do you remember, on Monday the 26th of February last, some baggage being brought from on board the hoy, to the Bear and Key?—Yes.

Did you examine it?—Yes, I examined the whole, excepting two mahogany packages.

What was your reason for not examining them?—I conceived there were no smuggled goods in them from their smallness; and if there were any treasonable papers, or any thing of that sort, I knew my authority was not sufficient to detain it.

Did any thing pass between you and Leary upon that subject?—Mr. O'Coigly told me they were colonel Morris's packages, and he had the keys; and they were his servants, which was the reason why he did not choose to have them opened.

The others you opened and examined?—Yes, I did.

Did they say where colonel Morris was going to?—They told me he was going to the East Indies.

The person to whom these two boxes belonged?—They said the whole belonged to colonel Morris, and part were marked with his name; that he was going to the East Indies, and he had the keys, which was the reason why they did not produce them.

Did you see Binns afterwards, at any time?—Yes, at Margate.

Do you remember any thing that passed respecting Binns at Margate?—I told him he was the man that had been with the people at Whitstable to hire a boat, as he answered the description they had given me of him.

Did he say any thing upon that occasion?—No, he did not say a word.

Had he said any thing before that?—I believe he said something that he seemed surprised that I should say he had ever been at Whitstable: I told him I thought he was the person that had been with the Whitstable people to get a boat to convey some persons to France.

You did not see Binns till he was apprehended?—No.

Mr. Dallas.—Nothing passed between you and Leary?—Not that I recollect.

Thomas Hockless sworn.—Examined by Mr. Abbott.

Are you part owner of the Whitstable hoy?—Yes.

Do you know either of the prisoners?—I know O'Coigly.

Upon what occasion did you see him?—I went to receive the freight from him on Monday evening, the 26th of February.

For how many did you receive freight?—I put down in the bill six parcels and four passengers, but there were seven, and four boxes, which made eleven.

Did he pay you?—He paid me one guinea.

Did you give him a receipt for it?—I did.

Mr. Attorney General.—Is this the bill?—Yes, it is.

[It was read.]

"Col. Morris,

"To Salisbury and Co.

" 1798.	s.	d.
" 25 Feb. "To 4 Passengers	10	0
"To freight of 6 parcel of badage	11	0
	£.1	1 0

"Rec^d the Cont^r,

"For Salisbury and Self,

"Tho' Hockless."

Henry Thomeett sworn.—Examined by Mr. Attorney General.

Where do you live?—At Offham, in this county.

What is your employment?—A labourer.

Do you remember being at the Bear and Key, at Whitstable, on Monday, the 26th of February last?—Yes.

Upon what occasion did you go there?—I only went there knowing the people there.

Did you see any of the prisoners at the bar there that night?—Yes, there were some gentlemen there.

Had you any conversation with those gentlemen about taking any baggage to any place?—I was in Mr. Perkins's tap-room,

where the two servants sat, one of captain Jones's, and the other colonel Morris's.

Do you know the names of the servants?—No.

Had you any conversation with them about taking baggage any where?—The waterman came in and said: he would not take them under a guinea and a half; I offered to take them for a guinea; the servant immediately asked me to go into the parlour to captain Jones; I went in and agreed to take them for him for a guinea.

Do you know captain Jones again?—Yes, that is him (O'Coigly).

Did you see colonel Morris at Whitstable, on Monday morning?—Yes.

Did you see them land?—Yes, I was there when they came on shore from the hoy, on Sunday afternoon.

You did not see colonel Morris when you went to agree about taking the baggage?—He was not there then.

Had you any talk about colonel Morris with captain Jones, when agreeing with him about the baggage?—Not a word.

Did captain Jones, or either of the servants, tell you where colonel Morris was gone to, or where you were to meet them?—I was to meet them at Margate.

Whom did you make that bargain with?—With captain Jones.

Had you any conversation with colonel Morris's servant about where his master was going to?—None in particular; I did not ask him any questions; in travelling he put that conversation to me, he said he was going to meet colonel Morris at Margate, with another gentleman coming from Dover.

In the conversation that passed, was it stated to you where colonel Morris was going to?—Captain Jones said he should return to London again, as colonel Morris and his servant were going to the West Indies.

You are sure of that?—Yes.

What time did you set out from Whitstable?—A quarter before seven in the morning.

At what time did you arrive at Margate?—About four in the afternoon; we stopped on the road to breakfast, at Mrs. Raddons, at a place called Sarr.

Was that on the Tuesday?—Tuesday morning.

Did captain Jones go with you?—He and the two servants walked along-side the cart all the way; we got to Margate about four.

Had you any other conversation with the captain, in your way from Whitstable to Margate?—After we left Sarr, captain Jones asked me what business I was; I told him I was a trader, and lived about forty miles from the place where I was then. I told him the people at Whitstable were all in a boggle about him.

What did you mean by that expression?—All in confusion to know where he was going; that they were in a mistrust about him, about

where he was going; he said he was going to meet colonel Morris and the gentleman from Dover; he said he had been at sea himself, that he had sailed in the *Morgan Rattler*, the last American disturbance, as captain.

Do you recollect what sort of baggage it was you took in your cart?—Yes, this is some of the luggage.

Do you recollect any thing in particular?—Yes, that box captain Jones told me to take great care of particularly, and a coat that was tied up; when we breakfasted, he ordered me to take the coat out of the cart into the parlour; I gave it to the person that stands behind him, that acted as his servant, he took it in the parlour.

Should you know the coat again if you saw it?—It was something like one of these coats; it was tied up with a tea-chest in it. After we had been at Margate about three minutes, colonel Morris came, with the other gentleman; he called for a private room.

Was that the same person you had seen come from the Whitstable boy, on the Sunday?—Yes, with a drab-coloured frock coat on, with another gentleman with him: they went up stairs immediately: I said to the servant, that is colonel Morris; by Jasse, said he, I don't know.

Which of the servants said that?—Allen.

Were you paid for this job?—Yes; captain Jones gave me a guinea. After the barber had dressed his hair, he went up stairs to colonel Morris.

Mr. Justice Lawrence.—Do you know the person that was with colonel Morris?—I did not take notice of his face as he came in.

Henry Thomsett cross-examined by Mr. Dallas.

You told captain Jones, on the way to Margate, that the people at Whitstable were in a state of distrust about him?—I did. When he gave me the guinea, he said, the people at Whitstable are nothing to you; they are in a boggle, keep them so.

Do you know a woman of the name of Sarah Jones?—Yes, she is a sister of mine.

Have you ever had any conversation with her about the evidence you intended to give upon the trial of this indictment?—Nothing of any consequence.

As to the consequence you will suffer us to judge: state what the conversation was you had with her upon the evidence you intended to give upon this indictment?—She sent to me when I was at Canterbury, to ask me about this business; she said it would be better for me if I did not come forward, she thought I might have some money there; I denied her, and went out of the house immediately. She said Mrs. Peek, the physician's wife, at Canterbury, was Mr. O'Connor's first cousin.

Upon your oath, and mind what answer you give, you never declared to her that you would hang all these persons?—I said if they

deserved it, let them be hung; I stick to my stuff now; I will never deny one word.

Upon your oath, have you not declared to her positively that you would hang all these persons?—I will take an oath I have not said any such thing.

Have you ever talked to her about the expectation you had of a reward after this trial should be over?—Never, I was not with her a minute.

And you never said, I take for granted, that if they had a hundred lives, you would take them all?—No.

Do you know Cornelius Kettle?—Yes, he lives at Offham.

Have you never told him that you were to have a reward after this trial was over?—No.

You never told him that you were to have a hundred pound for the job?—No.

Nor said any thing to that effect?—I said I would not take a hundred pound: my meaning is bribery, that I would not take a hundred guineas.

Upon your oath did you add the words, from any of Mr. O'Connor's friends?—No; it was only his conversation to me, that I refused it because I have had it put to me: since that I have had three hundred pound offered me.

Do you mean to say that the substance of your conversation to him, was, that you would not take a hundred guineas from any friend of Mr. O'Connor's; or that you would not take a hundred guineas for the reward you were to have for the evidence you were to give?—There was nothing of Mr. O'Connor mentioned.

But something of a hundred guineas was mentioned?—He might say, Harry would you take a hundred guineas, and I might refuse it.

But upon your oath, did he say so?—I cannot swear any such thing.

Upon your oath, what did you yourself say as to this hundred guineas?—There was no hundred guineas.

You said so just now?—I said I would not take a hundred pound.

What did you say about the hundred pound?—I said I would not take a hundred pound.

For what?—For bribery.

Do you mean to swear that is what you said to Mr. Kettle?—It was my meaning.

I ask you what you said; you will not swear you added the words for bribery?—That is my meaning, that I would not take a hundred pound, if any body offered me.

Did you make use of the word, that you would not take a hundred pound for bribery?—There was no such thing as a hundred pound mentioned.

Do you know a woman of the name of Mary Morgan?—No.

Was there any woman present at the time you had this conversation with Mrs. Jones?—There was some charwoman in her room there.

Henry Thomsett re-examined by Mr. Attorney General.

You dropped an expression that you had had three hundred pound offered you; pray who offered you that three hundred pound?—I had a brother that was sent from Newgate, a prisoner that is in there, that offered it me.

What did he offer it you for?—To go away, and not come against these people.

In point of fact, your brother came to you and offered you three hundred pound; how do you know he was sent from Newgate?—By his word.

That is all you know of it?—Yes.

You refused that three hundred pound which was so offered you?—Yes.

David Asstiter sworn.—Examined by Mr. Adam.

You are a stone-mason at Gravesend?—Yes.

Do you recollect, upon Sunday, the 25th of February, either of the persons now at the bar coming to your house at Gravesend?—The middle one, Binns, came to my house.

What did he say to you?—He mentioned a name in London that I knew, Galloway.

Who is he?—He is something in the iron work by profession.

Where had you known Galloway?—I had known him three or four years back in London.

You understand my question; in what character and capacity did you know Mr. Galloway?—As a member of the Corresponding Society; he mentioned Galloway's name, and said he wanted a horse.

Did he give any name as his own name?—He said his name was Williams.

What did he say about Galloway?—He only mentioned Galloway's name.

As how?—He mentioned his name from my knowing Galloway three or four years back. I recommended him to a horse, that was what he asked.

Did he tell you where he came from?—He said from London; that he had come down by the Gravesend boat.

Where did he say he was going to?—To Canterbury or Whitstable.

Did you procure him a horse?—I recommended him to a horse.

Did he name both places, did he say that he was going to Canterbury or Whitstable?—Yes.

Did you see any thing more of him till he was taken into custody?—I never saw him from that time till I saw him in custody.

You are sure he is the person?—I am.

You did not know his real name?—No, I did not.

Nicholas Cloke sworn.—Examined by Mr. Garrow.

You keep the Sun Inn, at Canterbury?—Yes.

Do you remember, upon the evening of Sunday the 25th of February, any person at the bar coming to your house?—Yes, Mr. Binns came to my house.

In company with whom?—A person of the name of Mahoney.

How did he come to Canterbury?—He came on horseback.

What application was made to you with respect to this gentleman?—Mahoney asked me if I could accommodate that gentleman with a bed, and take care of his horse, I told him I would do it; he begged me to put up his horse, then Mahoney and he went into the bar, and had some beer there.

Did the prisoner make any application to you to send to any other inn for him?—He desired me to send to the Fountain inn for a letter or parcel directed for Mr. Williams, and gave me a shilling to pay for it.

Was his name mentioned to you in any other way than desiring you to inquire for a parcel for Mr. Williams?—Not at that time; I sent, but there was nothing; one of them said it might be at the post-office, I believe Mahoney, but am not certain, said that, upon which Mahoney said he would go and see; he went.

Did the prisoner say any thing to you, after Mahoney was gone, with respect to the journey he had taken that day?—He said he was very much fatigued with his journey, that he came from London to Gravesend in the boat, and from thence to Canterbury on horseback, and was very much fatigued; he asked me when I thought the Whitstable hoy would be in, I told him I thought that evening.

Was this while Mahoney was gone?—Yes; Mahoney returned with a letter or two, which he gave to Mr. Binns.

I suppose you did not see the directions of those letters?—I did not.

Was it, or them, opened by the prisoner?—I am not certain whether one or two were brought; I saw him open one, then some conversation took place about the Whitstable hoy between Mahoney and Mr. Binns.

About its arrival?—Yes; Mahoney asked the prisoner then what he the prisoner intended to do with himself that evening; Binns said he had some thoughts of going to Whitstable; Mahoney advised him to stop and go in the morning, and he would get somebody to spend the evening with them; I then offered them another room, Mahoney went out and soon after returned, and three persons more, who spent the evening with them.

Who were they?—Claris, a bookseller, Stirrup, a man that lives in Canterbury, and another person that I did not know.

About what time did the prisoner Binns retire to rest?—About eleven o'clock.

When did you see him again?—The Wednesday following.

You never saw him till he was in custody again, I believe?—No; and then I saw him at Canterbury at the King's-head.

Did you go into the room where he was?—I did; I went up to him and told him I had had the pleasure of seeing him before, but he denied knowing me, and ordered me out of the room.

Repeat his expression when he denied knowing you, and ordered you out of the room?—He said he knew nothing of me, and with a deal of haughtiness ordered me out of the room.

That induces me to ask you whether you are sure that this is the person who was at your house upon the Sunday evening before, and with whom you had all this conversation?—I am.

Have you any, the least doubt in the world of it?—No.

*Mary Lemon sworn.—Examined by
Mr. Garrow.*

You were a servant to Mr. Cloke, at the Sun at Canterbury?—Yes.

Do you remember upon a Sunday night any person whom you now see in court sleeping at your master's house?—Yes.

Which is the person?—That man, Binns, [pointing to Mr. O'Connor].

How soon after he came to your house did you see him?—Till about ten o'clock, when he went to bed; I warmed his bed and lighted him to bed.

Was the person a stranger to you before?—Yes, he was.

Did that person, whom you so lighted to bed, give you any directions for the next morning?—Yes; I was to call him between six and seven o'clock.

Did you do so?—Yes, I opened his door, and called him.

How soon after you had called him, at six o'clock, did you see that person again?—He called for his shoes and black gaiters that he had, and I saw no more of him after he went out till between twelve and one o'clock.

Where did you see him then?—He came back to our house to breakfast.

Was any person with him when he came back?—Yes.

Are the two persons here that returned to your house after the guest had gone out in the morning?—Yes.

Who were these two persons that returned after the guest had gone out in the morning?—The person farthest from me (*Mr. O'Connor*) is one.

Was that the person (*O'Coigly*) that came back?—No.

Was that the person (*Binns*)?—No.

Was *Mr. O'Connor* the person?—No.

Which do you take to be the persons that came back?—*Mr. O'Connor* and *Mr. Binns*.

Which are the two persons whom you now take to be *Mr. O'Connor* and *Mr. Binns*?—*Mr. O'Connor* I cannot recollect.

Which are you take to be *Mr. O'Connor* now?—When I saw them before in London I knew them.

Are you enabled now to point out which you in your conscience believe to be those two persons?—No.

Do you think that by going nearer to them you should be able to point out the persons?—I think I should [*the witness went close to the bar*].

Do not hurry yourself, but look attentively at all those persons, and state which you believe to be the person you lighted to bed, and who went out early in the morning?—That is the gentleman that slept there [pointing to *Mr. O'Connor*]; no, that is the person [pointing to *Binns*].

Who do you now represent yourself to believe was the person that slept at your master's house?—That gentleman (*Mr. O'Connor*).

What did you mean just now by pointing to the person who stands nearest to you?—This (*Binns*) is the gentleman that came in the morning along with *Mr. O'Connor* about noon.

What do you mean?—He (*Binns*) is the gentleman that slept at our house.

There was but one stranger came to your master's house on Sunday, was there?—No.

Which of the persons do you believe was that stranger?—This gentleman.

Mr. Justice Buller.—I have struck her evidence out of my notes.

*Daniel Valder sworn.—Examined by
Mr. Garrow.*

You are an officer of the customs at Margate?—Yes.

In consequence of something that had come to your knowledge were you upon the watch upon the night preceding the apprehension of the prisoners at Margate?—I was.

Did you continue on watch till all the boats were laid aground by the state of the tide?—I did.

Did you afterwards go to *Mrs. Crickett's*, at Margate, where the prisoners were apprehended?—I did.

Did you assist in their apprehension?—I did.

Did any of the prisoners say any thing upon that occasion with respect to their knowledge of each other?—I did not hear them.

You assisted in seizing the baggage likewise?—I did.

Did you hear any conversation of the prisoners?—None at all.

*Oliver Carlton, esq. sworn.—Examined by
Mr. Attorney General.*

You live, I believe, in Dublin?—I do.

What official employment do you hold there?—I am high constable of the district of the metropolis.

Have the goodness to inform me whether you found those papers any where, and upon what occasion?—I found those papers in Leinster-house, in the apartments of lord Edward Fitzgerald.

Mr. Attorney General.—These are the two letters which Mr. Lane proved to be in the hand-writing of Mr. O'Connor.

Oliver Carlton, esq. cross-examined by Mr. Plumer.

You live at Dublin?—I do.

You know then that Mr. O'Connor was kept in close custody in the castle at Dublin for six or seven months?—He was for several months.

And he was then liberated without any trial?—I believe so.

I believe you remember when Mr. O'Connor had a seat in the Irish house of commons?—I do.

What place did he represent?—I do not know.

He is the nephew of my lord Longueville?—I have heard and believe so.

I believe it was the beginning of January, in the present year, when Mr. O'Connor left Ireland?—I do not know the time he left it.

Mr. Attorney General.—Look at this letter subscribed James O'Coigly?—I found all the letters in the same room; I put a wafer on them.

Mr. Abraham Abbot sworn.—Examined by Mr. Attorney General.

Where do you live?—In Cork, in Ireland.

Be so good as look at these two letters, and say if you know whose hand-writing they are?—I believe them to be the hand-writing of Mr. O'Connor.

Have you seen him write?—I have.

Mr. Attorney General.—These two letters were also proved by Mr. Lane to be Mr. O'Connor's hand-writing. We will first read the letter to lord Edward Fitzgerald.

[It was read.]

"My dear Friend;—I have had a letter written to you these ten days, and have not had an opportunity of sending it to you; you can't conceive how it has vexed me not to be able to find a good, or indeed any way of getting Maxwell off; he has been most active to try and get away from his creditors, but they so watch him, and this embargo by the enemy make it most difficult, though I think he will be off in three days from this; it's said that lord Fitz-William is going over to Ireland, and that great hopes are entertained of separating the Catholics from the Union. This will be your, and every honest man's business to prevent, and though a few of the old committee patriots should attempt it, the people are most honest.—I received both your letters, the one to Debrets, and the one by the young men—I shall do all I can for them, and hope with effect in three days; if that fails, I will make it a point with Maxwell that he goes by Hamburgh; indeed he is in the greatest impatience to be off. The man of consideration told me he heard the government here had intercepted a dispatch from France for

Ireland, which promised great assistance. They are here in great consternation, the money and their commerce are very low. The black terrier and his little brother are but sorry can—the latter has become a land-broker, and, if I am rightly informed, has found the little priest, and the sugar taker and many others have sent him their money to lay out for them, and thus to have their agent they have been at work; Chevalier was the person who wrote to my friend to have nothing to do with Nicholson or her set, for that they had fallen into contempt, from the appearance they cut.—I send two copies of the pamphlet, but they must not be let out of the room you and Pamela read them in, until you hear from me, as otherwise I should be in limbo: there is not one out there, nor will there until I can do it in safety,—you can have an edition printed in Ireland—I shall send you 100 copies for the instant, they are to be sold at three shillings and sixpence, and of course not to be given to any that cannot be depended on, to avoid prosecution. The instant I get to Williams you shall hear from me, I mean to be as active as I can; one of the copies are for Dowdall, and let him insert as much of it, or all of it, as he likes; he will observe the errata and the corrections. I have not words to tell you, how much I am concerned at Pamela's illness, but I hope and trust she is getting better—I send you a letter for M^r.N., and leave it open that you may see it. You can seal it, and send it to him, and send the money to Hugh Bell for me. Adieu, my dear friend, be discreet, and on your guard. Yours, ever most sincerely.

P.S. I have written to Emmett about your friend's bail—he has adjusted his fortune, so as that you nor he can be put to any inconvenience for want of the money being paid.

"Lord Edward Fitzgerald."

Mr. Attorney General.—We will now read the paper, which is proved to have been found in the razor case, which explains Williams by the word France.

[It was read.]

"France	Williams
"Spain	Thompson
"Holland	Gray
"England	Richards
"Brest	Lisbon
"Texel	Emden
"Belfast	Boston
"L. Swilly	Rhode Island
"R. Shannon	New York
"Galway	Philadelphia
"Shannon	Delaware
"Bantry	Chesapeake
"Kinsale	Cape Fear
"Cork	Charlesfort
"Waterford	Williams-town
"Wexford Coast	Newfoundland
"Wicklow Coast	New England
"Dublin Bay	Honduras Bay

" Howth Bay	Campechy
" Direct.	Correspondents
" 1,000 men	£1,000
" Ship of line	A Hogshead
" A frigate	A Tierce
" Ireland	Patrickson
" A Musket	A Nail
" A Cannon	A Jarr
" A Six Pounder	Six Quarts
" Military Stores	Merchandise
" Dover	Doneghadee
" Calais	Port Patrick
" Hamburg	Baltimore
" Horses	Hooks
" Carts	Lines
" Guard	Supercargo
" Land	Silk
" Years Purchase	Bales of Silk
" Paris	This Place
" Beer	Blake
" Ld. Fitz.	O'Brian
" Mathewson	Marks.

Mr. Attorney General.—Now we will read the other, which is a letter to Mr. Roger O'Connor.—There is a passage at the end of the letter which has just been read "I have written to Emmett about your friend's bail."—The letter to Mr. Roger O'Connor will show what that means.

[The letter was read.]

"London 13th February, 1798.

My dearest Friend,—I have sold all my property to Burdett, yet it may still go on in my name, and the rents are to be transmitted to Hugh Bell, No. 40 Charter-House square;—Sweeney said he would undertake to receive the rents, and after paying all the charges, transmit the remainder, there are £50l. to William, 50l. to J. Bullen, 42l. to the widow of Henry, and 36l. to the Miss Bullens and Wogan, making in all 378l.—on receipt of this you will send for Burke, and see all his accounts, and tell him to pay the rents to Sweeney.—Nothing can be more confused than his way of keeping accounts.—I have over and over again given him a plan for keeping them but he never could be brought to follow it.—Let Sweeney give him a book and show him how he is to enter the accounts. I beg you will examine how his accounts stand, for I believe he do not ever pay his own rents, which are considerable—out of the half last year I received but little—I beg of you to lose no time in putting my affairs in the best footing—if you can sell the estate at Cork, Burdett will sign the deed of sale, as he has a deed from me. If this could be done, it would be of great use, as I could dispose of the money to the greatest advantage—all this I depend on your and Sweeney's exertions for.

"Your letters have gained you the greatest credit. No one that has not been struck with them—Burdett and I have written to you often, which from your's to him I find you never got—we ordered you the

Courier—as to the morning papers they are mere lumber in your office—so we did not send you more than the Courier, as, in the business of the Press, we found it useless to have any other—I shall leave this to-morrow, so that you will not hear from me again for some time. I have heard of concessions—but I lay little stress on them—if the people are true to themselves they must be free—Edward will hear from me more regular than you, and will tell you of me until we meet. Adieu, my ever dearest friend, ever and for ever your's.

"Nothing can be worse than the state of their finances here—they are alarmed to the heart, so much so, as to plan desperate measures, Scotland is Irish all over, the people here give no opinion, though it is easy to learn that they look for a change.

"I have just heard that the government here have stopped a letter from France to Ireland offering the Irish support. It was told me by a courtier; and I believe it is the case. Ever your's my beloved friend.

"I send our dear friend a letter by the same mode I send this, as the post-office stops them else."

Mr. Plumer.—I wish to ask Mr. Carlton two other questions—

Olivier Carlton, esq. called again.

I believe Mr. O'Connor was concerned as the editor of a newspaper called the Press?—Yes.

When you arrested Mr. O'Connor you seized all his papers that you found?—All that I found in his possession.

I believe you afterwards seized all his brother, Mr. Roger O'Connor's papers?—No, I did not.

Were you not present when they were seized?—No.

He has been in gaol too for many months?—I believe for some months.

And was liberated in Ireland?—I believe so.

Mr. Attorney General.—Do you mean to say that Mr. Arthur O'Connor was concerned in the paper called the Press?—Yes.

Do you know that fact?—Yes; I know his name was at the bottom of the paper called the Press.

You never saw his name registered at the Stamp-office, did you?—No.

Mr. Attorney General.—I will now prove the hand-writing of Mr. O'Coigly to the letter found by Mr. Carlton at Leinster house.

Mr. Frederick Dutton called again.—Examined by Mr. Attorney General.

Do you know whose hand-writing this letter is?—It is Mr. O'Coigly's to the best of my belief.

* As to which see the case of Peter Finerty ante p. 901.

[It was read.]

"Dublin Jan. 14th, 1798.

"Citizen;—You will please to remain at home to-morrow, as I intend to call upon you precisely at seven o'clock in the evening, to talk over that business of the letter, and other affairs of that business likewise.

"JAMES COIGLY."

"To Citizen Fitzgerald,
commonly called
Lord Edward Fitzgerald."

Mr. Frederick Dutton cross-examined by Mr. Gurney.

Pray, how many informations may you have laid in Ireland, in the course of the last three or four years?—Indeed I could not tell.

I would not tax your memory too closely; do you think you can guess within fifty?—I do not know whether I am obliged to answer that question; I beg the protection of the Court.

Mr. Garrow.—I should doubt whether, in the present state of Ireland, this examination may not be dangerous.

Mr. Gurney.—When a witness comes to relate a fact, especially a fact against a prisoner surely I have a right to shake his credit by any means in my power; and it is one mode, if I prove him to be a common informer. I may have, and I have other questions to follow this, which I conceive to be of considerable moment to the credit of this witness. I submit that, as a foundation for the future questions I have to ask, I am strictly regular in asking whether he can tell the number of informations he has laid within the last two or three years.

Mr. Attorney General.—What is meant by that? for it is an ordinary sort of phrase which I cannot understand.

Mr. Gurney.—Then I should have thought that was a reason why the question should not have been objected to by counsel. If the witness says he does not understand it, that is another reason.

Mr. Attorney General.—Do you mean informations before a magistrate.

Mr. Gurney.—Take it so—what number of informations he has given before magistrates?

Mr. Justice Buller.—He says he is under the protection of the Court: if he thinks himself entitled to the protection of the Court, to prevent him from answering, he must state a little more.

Dutton.—If it is a fair question, and agreeable to your lordship, I will answer it. The answer is this—I am on my oath now.—and I believe, if I recollect, you asked me whether I could recollect within fifty; my answer is, I never lodged fifty informations in my life.

Mr. Gurney.—How many have you lodged?

Dutton.—I could not say upon my oath, exactly, but I really do not know that I ever lodged ten.

Mr. Attorney General.—Is it to be asked in every case against what individual, and upon what account, that information has been lodged?

Mr. Justice Buller.—No, Mr. Gurney has not gone to that.

Mr. Attorney General.—Mr. Gurney professes attempting to discredit the witness, by getting out the number of informations he has given; I have a right to set up the credit of the witness, by asking him to the fate of those informations, who are the individuals named in all of them; and what the effect of that may be, may be worth consideration on all sides.

Mr. Justice Buller.—And therefore, if any inconvenience or mischief is likely to arise from it, the Court ought to be told so, but I cannot divine it.

Mr. Garrow.—That seemed the ground upon which the witness meant, as it seemed to me, to make his objection. The question put was how many informations have you given—do you think you can guess within fifty? Mr. Gurney states as the ground of his question, that he has a right to impeach his credit by proving him to be a common informer. After the fate of observations lately upon that subject, about persons who are ignominiously called spies, I hardly expected that would be stated as a ground of imputation to a witness. I am to learn, that any information, for the purpose of advancing the public justice of the country, is a ground of imputation. I am sure, in no times could the justice of the country be administered, if that is taken as a broad proposition to be stated in a court of justice. The witness throws himself upon the Court whether he is bound to answer that question; and if it is to be asked, how many informations he has laid, and it is to end there, it is indirectly attacking the credit of the witness, without giving him an opportunity to defend himself. What follows? Why upon the part of the crown we shall be bound to ask against what manner of persons and what particular individuals—of what classes—and what societies this person has given informations—what has been the fate of them whether true or false—and whether they tended to the administration of justice or defeating it, which I admit, if founded in falsehood would disgrace the witness; but we have heard, from the highest authority, that the witness is not to be impeached, because he has been so examined as a witness; if they can produce any record of conviction, or shew he has conducted himself so as to disgrace him, that is another thing; but if it is by a wholesale sweeping question, to ask how often this gentleman has been instrumental in advancing the public justice of the country I protest against that as any ground of attacking any witness's credit.

Mr. Gurney.—I hope and believe I have not been so absurd, as, by way of discrediting a witness, to ask him how often he

has contributed to the advancement of the public justice of the country; neither have I, under colour of addressing the Court on a point of law respecting the admissibility of evidence, made an address intended for other ears on the effect of the evidence. I have asked this question of the witness (with a view to ask farther questions which I expect will impeach his credit), how many informations he has laid; I may pursue that the length of ascertaining that he is a common informer; a common informer, in one sense, may be a very bad character; it is possible, and barely possible, in the other senses, that he may not be a bad character. Possibly I may go on to show that this is a man of so infamous a character, that his informations have been rejected on that very account; I may go on to show his evidence has been rejected in a court of justice on that account; it is possible I may prove that by evidence; therefore I submit this is a proper question.

Mr. Justice Buller.—It is meant, I understand it now, to throw an imputation upon him; then he is entitled to the protection of the Court.

Mr. Gurney.—If I asked him a question which would convict him of a crime, then, my lord, he would be entitled to the protection of the Court.

Mr. Justice Buller.—We are all of opinion, as it stands now, that the question ought not to be put.

Mr. Justice Lawrence.—You cannot follow up the question, by asking him whether he has been believed.

Richard Ford, esq. called again.—Examined by Mr. Attorney General.

These prisoners were brought before you at Bow-street, I understand?—They were.

Did you take the examinations of any of them in writing?—Yes, the examination of the prisoner O'Coigly.

Were you present afterwards when the prisoners, or any of them, were examined before the Secretary of state?—I was present when they were all examined before the Secretary of state.

Did the prisoner O'Coigly sign his examination?—He did not.

Did you propose to him to sign the examination?—I did, and he declined it.

Was it proposed to the several prisoners in your presence to sign the examinations that were taken before the Secretary of state?—I cannot exactly say whether it was to all of them; I rather think it was; I am sure it was to Mr. O'Connor, I am sure it was to Mr. O'Coigly; there was no examination reduced to writing of Mr. Binns; I believe Mr. Allen also refused to sign his examination; I have no correct recollection about the prisoner Leary.

Have you got the examinations that were taken at Bow-street, and before the Secretary of state, which they refused to sign?—I have.

Were you the person who took down those examinations at the time?—I was; this is the one I took at Bow-street.

Richard Ford, esq. cross-examined by Mr. Plumer.

Was not the reason why Mr. O'Coigly would not sign it, upon its being read over, that he said it was not correct?—No, that was not the reason.

Did he not say so?—No.

Was there no observation of that sort made?—Mr. O'Coigly at Bow-street said it was the purport of what he had to say, but that he did not choose to sign it. Mr. O'Connor's examination took up some time, and he and I afterwards went into another room, where it was settled, as far as I believe it could be, to his satisfaction, but he declined signing it.

Mr. Attorney General.—Do I understand you right, that after it had been taken, Mr. O'Connor and you settled it together to his satisfaction?—Mr. O'Connor was examined before the members of the council, and I took down a note of what he said; that was afterwards copied by one of the clerks, and copied incorrectly; when it was read over the next day to Mr. O'Connor, he objected to many things, that they had not been written as he stated; I was desired to go into another room with Mr. O'Connor to settle the examination by ourselves, and I settled it to Mr. O'Connor's satisfaction; Mr. O'Connor dictated a good deal of it to me; there was nothing I took down that I did not afterwards read to him, and have his assent to it.

Mr. Plumer.—Did you tell either of these gentlemen, when you were taking down their examination, that it might be produced against them?—No.

You did not give them any notice of that?—No.

Mr. Attorney General.—What was said to the persons who were examined in your presence by the Secretary of state, before any questions were put to them?—They were told, as all the prisoners I have been present at the examination of before the Secretary of state, have been always told, when brought in, that the charge against them is of such and such a nature; that they may decline answering any question that they feel at all to affect them.

Mr. O'Connor.—Did I not, at the council, when I saw you writing, make an objection to anything I said being taken in writing, as it was so liable to mistake?—I rather think you objected; you seemed to think something might be taken down in an unfair way; it was upon that ground afterwards that you were desired to do me the favour of going into the next room, and settling your examination with me to your own satisfaction.

Mr. O'Connor.—Do you recollect, when I went into that room, that I objected to most parts as it had been taken down?—As it had been taken down before.

Mr. O'Connor.—Do you recollect that you were rather fighting to have a good deal retained, which I was rather unwilling should?—I will state how I feel that in my own mind at present. You said a great number of things the day before (whether relevant or not I have nothing to do with) which the next day, or the day after, when you were in the other room with me to settle the examination, you wished to alter; many of them had no reference at all to the charge; those things were altered certainly; a great number of things were struck out, and I believe I might have said, in answer to your question, “Why, it does not much signify, you certainly said that, it may as well stand as not.”

Mr. O'Connor.—You constantly said, “It does not signify.” To hasten the matter, I brought in the paper to the duke of Portland; you wanted me to sign it in the state it was; I did not choose to sign it, but I am not conscious that there is any thing in it.

Mr. Attorney General.—Was there any thing put down in the first paper that Mr. O'Connor did not declare?—Nothing.

Richard Ford, esq. cross-examined by Mr. Ferguson.

Whether you can bring to your recollection whether the prisoner Allen was asked to sign his examination?—I can hardly say whether he was examined or not; if he was, it was very slight. Yes, I have a minute of his examination; I think he was asked to sign it, but he did not sign it; but I do not state it with that certainty that I do with respect to Mr. O'Connor or Mr. O'Coigly.

Mr. Attorney General.—Did Mr. O'Coigly call himself Mr. Fivey, to you?—I asked him what his name was; he said it was Fivey.

[The Examination of James John Fivey, taken before Mr. Ford, read.]

“*Westminster to wit.*—The examination of James John Fivey, of Dublin, in Ireland, who says, that being in an ill state of health, he went into Keht, with a view of passing a short time in the neighbourhood of the sea, previously to his going to Dublin, having an expectation of going in some trading vessel back to Dublin in a few days—that he went down there (to Whitstable) in a Whitstable hoy, embarked near the Custom-house at Chester-key, on board the said hoy, and arrived at Whitstable on that night. That a young gentleman, named Allen, who was introduced to him a few days before, proposed to go for a few days with him previously to his going to Jamaica, where his brother lives; that said Allen was introduced to him a few days before by an Irishman, whose name he forgets, but rather believes to be one Hamilton. That Allen is an Irishman, and is now in custody; that another gentleman and his servant went on board with him, who are strangers to him; that he saw the name of Morris on their trunks; that the linen striped bag, a pair of

saddle-bags, and a leather portmanteau, all now produced and marked by John Revett, in examinant's presence, were his (examinant's) luggage. That he recollects having seen the three mahogany boxes now shown him, and marked by Richard Smith, and another box in a leather case, and rather thinks they belonged to the gentleman he saw on board the hoy. That the paper-board box now produced, he also remembers to have belonged to said Allen.—And this examinant says he last lived in Greek-street, in Dublin, at Mr. Marmion's, and is of no particular business; that he has been in London ever since May last, excepting a short time at Mr. Campbell's at Liverpool, and lodged in Barton-street, Westminster, and with Dr. Macan, in Charles-street, Westminster, and elsewhere. That when at Whitstable, one Perkins offered to take him to Flushing, which examinant refused, meaning to go to Margate.

“Taken by me, this 1st March, 1798,
“RICHARD FORD.”

Mr. Plumer.—Where was the luggage marked?—At Bow-street.

By whom?—I directed it to be marked; I think I saw Smith mark it; I am sure it was marked by some of the persons that came from Whitstable; it was marked in the room in which I was.

Were the prisoners there?—I cannot say whether they were or not.

Mr. Justice Buller.—Had O'Coigly seen the luggage when that examination was taken?—It was in the same room, he was close to it, and when these boxes were marked, they were pointed out to him.

Mr. Plumer.—It is here stated as a fact, that they were all marked by Revett, in his presence.

Mr. Ford.—That is my writing, I wrote it from what passed at the time.

[The Examination of John James Fivey, taken before his Grace the Duke of Portland, read.]

“The examination of James John Fivey.—This examinant says that his name is Fivey, and that his Irish name is O'Coigly, Coig meaning in Irish *five*; he is of no particular profession, and declines answering whether he is in orders or not; he came to England about the latter end of May last; he did not engage the Whitstable hoy before hand, but told a sailor he designed going, and made no particular agreement; he sent his baggage, but declines answering by whom; he meant to have staid at Whitstable if he had found good lodgings; from thence he went by land to Margate, across the country, with a person who showed him the road; he walked; two of the company who were in the hoy joined him; he may have seen Mr. O'Connor before, but had no connexion with him. Mr. O'Connor went to Canterbury, he had no direction to examinant at Margate. Examinant came to the

inn first; though Mr. O'Connor's servant and another young man, by name Allen, came before him. Examinant had been introduced to Allen before by an Irishman, as stated in his former examination. He has seen Binns at a public meeting in the last summer, but has no particular acquaintance with him; he thinks Binns went by the name of Williams, but has no direct knowledge of it: examinant is sure he did not see him at Whitstable, or any where between London and Margate, and that he had no kind of communication with Williams about getting a vessel at Whitstable. And this examinant farther says, that he did not know that O'Connor went by any other name, but he saw the name of colonel Morris written on the trunks; examinant had no great-coat with him, nor was there any great-coat in the room when he was taken; there were several great-coats in the party, but he don't remember who wore them. Examinant should have remained at Margate, and have left his company in a few hours; he inquired for lodgings, the girl at the inn said she knew a person who would let some cheap, and that she would make inquiries. Examinant was not in health; he paid for the boy a guinea; the man gave him a receipt; the gentleman desired him to pay for all the party.—Examinant [being shown a paper, No. 1, signed O'C. and marked J. Revett*] he says he does not know the hand-writing, or whether it was meant to be addressed to him. Examinant has been in Plough-court Fetter-lane, and may have had letters directed to him there; [being shown a pocket-book, green and gold, produced by Revett] he says it was not found upon him; he declines answering as to the letters of ordination found on him; he knows nothing of a paper directed to lieutenant Johnes [now shown to him] or of a letter from Manchester, signed Wm. Parkinson, directed to Amsterdam; he never saw the paper purporting to be an Address to the Directory of France: no money in the baggage belonged to him, he supposes it belonged to the person who had it in his care. Examinant denies the great-coat to be his; the baggage was taken care of by the gentleman; examinant saw something like the coat in the cart; says that he dined with Binns and O'Connor, and that Allen and O'Connor's servant dined together; being shown a stock buckle [produced by John Revett], he says he had one, but does not know whether that is it or not; [being shown a dagger, produced by John Revett] he says he bought it near Capel-street, on the north side the river in Dublin; he did not order it, but found it ready made; when he came to London, he lodged in Barton-street, at No. 8, up two pair of stairs; lately he has had no lodging, but slept occasionally at acquaintances; the last night he slept at

Hamilton's in Holborn: he knows Evans of No. 14, Plough-court, but does not know whether he is a member of the Corresponding Society. Binns of Fetter-lane, is a member of that society, as examinant believes. Examinant had the care of the baggage from Whitstable to Margate, but knew nothing of its contents; they were to settle with him at Margate; examinant never saw it opened but by the revenue officer at Whitstable.—Examinant does not know one Mahoney at Canterbury, or any other person there, nor had he any recommendation to any person there, or direction; he does not know any person named Williams; [being shown a paper in pencil, marked 2 Fivey, and produced by John Revett*] examinant says, he does not know it; that he does not know Mr. Murphy in Dover-street, Piccadilly; [being shown a paper marked 7 Fivey, John Revett] he says he does not know the hand-writing, nor a paper marked No. 6, Fivey; he says he has seen Crossfield† and colonel Despard,‡ but does not know much of them. He knows also one Sluchey a taylor, near Bloomsbury, but does not know Palmer.

"Taken before me, this 5th day of March, 1798. PORTLAND."

Richard Ford, esq. cross-examined by Mr. Plumer.

Whether particular questions were not put to the prisoners when they were examined?—There were.

Is any one of those questions put down in this examination?—Not one, excepting where it says, "being shown such a paper," or "being asked."

Have you taken down the answers without taking down the questions?—I took it down in the nature of an examination.

Then when a question is put and negatived, it is not noticed. You do not mean to represent that this contains every thing that passed?—I should upon my oath refer to that paper, 'as a pretty correct transcript of what passed.

I dare say that you took down correctly what appeared to you to be material upon the subject. I do not know that you were aware at the time it would be produced in a court of justice?—There was a great probability that might be the case; I took it down as completely as I could, there were a number of things which I did not think it was material to put down.

I understand then you did not apprise the prisoners, that these would be made use of against them, as evidence, which I take for granted, you would have done if you had expected it. There is not one question put down?—No.

Mr. Attorney General.—Is not this the con-

* Being the note beginning "Dear Jones." Vide page 1293.

* Being the direction to Mr. Kean Mahoney.

† See his trial, p. 1, of this volume.

‡ See his case, A. D. 1803, *infra*.

stant course in which examinations are taken?—Yes, I have attended the privy council for years, and this is the manner in which examinations are always taken down, at the privy council, and at Bow-street.

Mr. Justice Buller.—Did you read this over to the party?—I am almost certain I did.

Mr. Attorney General.—Is it not the constant practice to read them over to the party afterwards?—I am almost certain I did.

Mr. Justice Buller.—Have you any doubt whether you did or not?—I very strongly think that they were read over to them.

Mr. Plumer.—But you will not be positive?—I will not be so positive as I am that Mr. O'Connor's was read over to him, because that passed in a room in which he and I were together, and I remember taking particular notice of that.

Mr. Justice Buller.—Have you any memory whether the examination taken in Bow-street was read over to O'Coigly?—It was read over to him, and he was asked if he would sign it; and he was asked also whether he would sign that before the privy council.

Mr. Plumer.—It would be very material to see the questions.

Mr. Justice Buller.—I never saw an examination with the questions.

Mr. Garrow.—According to the direction of the statute, this is precisely the form that has been constantly adopted.—Your lordship recollects in Lamb's case, it was precisely in this form, and he was executed upon it; after it had been saved for the opinion of all the judges.

[The Examination of Mr. O'Connor, taken before his grace the duke of Portland, read.]

Middlesex } The Examination of Arthur
to wit. } O'Connor, esq.

"This examinant says that he embarked on Sunday morning last, some where near the Tower. That his purpose was, to go to Whitstable, his ultimate intention being to go to Margate; that he did not know any person of the name of Fivey; there were people in the hoy, and amongst them, a very old man, and some others, but how many he does not recollect.—Being asked whether he knows one Bians, he declines answering as to him, or any other person: he declares unlimitedly that he had no intention to have gone to France, or had engaged any vessel whatever for that purpose; that he landed at Whitstable, and was afterwards at Margate, but does not say with whom. That he heard that his baggage was examined at Whitstable, though he was not present; but as the baggage has been a long time out of his possession, he declines saying what part of it belonged to him; that he told his servant to take his baggage to Margate, but heard that he could not get it conveyed by water. That examinant went from Whitstable to Canterbury, in his way to Margate. Says that he does not know a person named Mahoney, at

Canterbury; respecting the baggage he says, from its having been opened since it was in his possession, he declines specifying what part belongs to him; that he is no ways accountable for what may be in the baggage, not having himself kept the keys of it; he says there are some mahogany boxes which belonged to him, that there appeared to be 2 boxes that had money, but as they and the keys have been sometime out of his possession, it would be imprudent in him to be accountable for their contents; that he knows of no paper that can apply to him, and that he never kept a paper that any person ought not to see, and that he is convinced, that when the boxes were in his possession, there was no political paper in them; but that there was money in them belonging to him; that he thinks there are 4 rouleaus of 50 guineas each, in one box; that he does not exactly know the amount in the other, but that it contained louis.—Says he bought the louis in London, from a gentleman who got them, he does not choose to name him; that he had had an intention to have gone to Hamburg; that he was expecting letters conveying intelligence of his bail, which were to determine the time of his going to Ireland, and that he had an intention to have sent his baggage by sea to Ireland; says that he seldom travels by his own name, and that he had seen some of his things marked with the name of Morris; he declines saying whether he ever went by the name of Maxwell; and this examinant declines saying any thing, as to who was with him at any particular time; he does not wish to be thought connected with any body else, but to stand clear of all other persons.—That he gave his servant money to pay for his fare, and of course supposes that he did so; that he should not have authorized him to have paid for any body else; that he had had a jacket made when he had an intention to have gone to Switzerland, which may be in his trunk; that he meant to have paid a visit to lord Thanet, and lord Stanhope, from whom he had received invitations; that he had a case of pistols made by Manton, and another case which he had had from a friend, but that he is not answerable for any thing that may be found in those cases for the same reason he gave with regard to the other boxes.

"Taken before me, this 5th day of March, 1798. PORTLAND."

Mr. Attorney General.—We have a translation of the paper found in the possession of Mr. O'Coigly.

Mr. Plumer.—I believe Mr. O'Connor when he was asked upon the subject of that dress, stated that he had always, when abroad, travelled as a military man?

Mr. O'Connor.—I said I had travelled in company with general Hutchinson, and that I always travelled as a military man, which I found most convenient.

Mr. *Plumer*.—I observe that is not put down in the examination?

Mr. *Attorney General*.—Was that put down upon the first day's examination, and struck out afterwards, when you and Mr. O'Connor settled it to Mr. O'Connor's satisfaction?—I recollect particularly that I had written down "military jacket,"—and that upon the second examination, when settling it to Mr. O'Connor's satisfaction, Mr. O'Connor objected to the word "military," therefore I struck it out, and left it jacket.

Mr. *O'Connor*.—Did I not state that it was a walking jacket, which I intended for Switzerland?—Mr. O'Connor walked up and down the room, and dictated the words, and he will do me the justice to say that I wrote them down as he dictated.

Mr. *Attorney General*.—In order to set this right; I must ask whether a great part of what Mr. O'Connor had stated upon his first examination, was not struck out, at the second, at his own instance?—It was.

Mr. *O'Connor*.—When I first began the examination, whether I did not say, I could not think of saying any more unless the paper was to be shown me after it was written, and unless any part that I thought misrepresented was to be struck out?

Mr. *Ford*.—Do you mean the second day?

Mr. *O'Connor*.—No, the first day.—It was upon that ground I was desired to settle it the next day to your satisfaction.

Mr. *O'Connor*.—Then I desire you will recollect whether I did not particularly mention that I had travelled in company with general Hutchinson as a military man?—I remember what you state perfectly well, excepting that I do not recollect the name of the military gentleman you mentioned.

[An extract from the pocket-book, found on the person of John Binns, read.]

	£.	s.	d.
" 21. Gravesend boat, - - -	0	1	0
" Coach to Rochester, - - -	0	2	6
" Bed and maid, - - -	0	1	2
" 22. Breakfast, supper, and waiter, - - -	0	4	3
" Brandy and water, - - -	0	1	0
" Coach to Canterbury, 27, - - -	0	8	6
" Coachman and expences, - - -	0	1	6
" Dinner, - - -	0	2	6
" Brandy and water, Whit, - - -	0	2	0
" Supper, bed, and breakfast, - - -	0	6	0
" 23. Whit punch, - - -	0	5	0
" Dinner, - - -	0	2	0
" Tea, B. and W. - - -	0	2	0
" Bed and maid, - - -	0	1	6
" 24. Coach to Deal, 15, - - -	0	6	6
" Coachman and breakfast, - - -	0	2	6
" Dinner, - - -	0	2	0
" Horse, F. 17 ½ charge, - - -	0	11	0
" Expenses there, - - -	0	1	0
" Deal, - - -	0	3	0
" Post 18. 1. 5. - - -	1	2	6
" Boy, - - -	0	2	0
" Turnpike, - - -	2	0	6

" Tea, - - -	0	1	0
" Coach to London, 54, - - -	0	18	0
" Supper, - - -	0	2	6
" 25. Coach to Than, - - -	0	2	0
" Boat to overtake hoy, - - -	0	1	0
" Gravesend, - - -	0	1	0
" Dinner, - - -	0	1	6
" Horse, - - -	1	1	0
" Tea, oats for horse, Newington."			

[Note. The last seven articles written in pencil.]

[On the other side of the leaf.]

" Mr. Hayman, junior, Middle-street, beg to know if Mr. Moule or Mr. Campbell is " at home,"

[The following paper, found on the person of John Binns, read.]

" Sign Captain's Name as my own	
" My Cousin - - - -	The Vessel's Name
" Margaret - - - -	Margate Hoy
" Safety - - - -	Agreeable
" Luggage - - - -	Incumbrance
" Departure - - - -	Deployment
" Whitstable - - - -	The Church
" Canterbury - - - -	Deacon
" Gravesend Boat - - -	Blair's Grave
" Rochester - - - -	Clergy
" Coach - - - -	400 per Ann.
" Waggon - - - -	800 per Ann.
" Guinea - - - -	Shilling.

" Claris, Bookseller, Canterbury."

[The following being proved, by Mr. Ford, to be a faithful translation of the French Passport was read.]

" No. 448 Liberty Equality Gräus

" No. 1277

" L. S.
" French
" Republic

" The Minister Plenipotentiary of the French Republic, at the Batavian Republic
" Requires the Corps Administratifs, and
" all officers, civil and military, freely to let
" pass Citizen James J. Coigly, American Traveller—Native of Boston—Department of
" ——— resident at Boston, 35 years of
" age, five feet four inches high, greyish hair
" and eyebrows, open forehead, moderate
" nose, blue eyes, middling sized mouth,
" round chin, round and full face, going to
" Paris.
" The present valid only for two Decades,
" and countersigned by one of the Secretaries
" of Legation.
" The Hague, the 25th Fructidor—fifth
" year of the Republic, One and Indivisible.
" The Minister Plenipotentiary of the
" French Republic. " F. NOEL."
" " L. S. " The Bearer of the
" (" French Legation, " Passport
" in Holland. " JAMES J. COIGLY.
" The Secretary of the Legation,
" 25 at Boston, at one Receipt, " F. FOUQUE."

On the reverse is written as follows:

"Examined at the Police Office at Valenciennes, the 28th Fructidor, 5th year—MALLOM.

("L. S.) The Card of Hospitality being returned (delivered by virtue of a Letter from the Minister of the General Police) and sent to the Administration of the Department for the Exchange of a Passport conformable to Law, this 21st Brumaire, 6th year.

"For the Administrators Cujus.

"F. No. 13. Examined by Us Administrators of the *Department of the Seine*, the Passport on the other side having been delivered to James J. Coigly, American Traveller, who wishes to go to *Boston in America*; Referred to the Central Office of the Canton of *Paris*, in the Department at *Paris*, the twenty-sixth Brumaire, 6th year of the French Republic, One and Indivisible.—LE BLANC.—BREMER.—JOUBERT.

"Examined at the Central Office of the Canton of *Paris*, the 27th Brumaire, 6th year.

("L. S.") "For the Administrators
("Central Office at Paris, 4th Year.) "Cujus."

("L. S.") Examined at the Office of Armaments, the Person mentioned on the "Department of the Seine." of the other side going to *Hamburg*, on board the Danish sloop the *Two Sisters*, Capt. Peterson, at *Havre*, the second Frimaire, An. 6. —DUPLESSIS, OLIVAUULT.

"Examined by the principal Commissioner, LE ROY.

"Examined at the Police Office, at *Havre*, to proceed to the place of his destination, the 2nd Frimaire, 6th year of the Republic, One and Indivisible.

"COMMUNE, Comy. of Police.

"MALTHIEU

"Examined by the Provincial Commissary, 3 December, 1797.

"A. SCOT."

John Jones sworn.—Examined by Mr. Garrow.

I believe you live in *Lincoln's Inn*?—I do.

Do you know a person of the name of *Evans*, in *Plough-court*?—Yes.

Do you know the prisoner, *Binns*?—I do.

Do you remember seeing Mr. *Binns*, on Thursday, the first of *March*, any where?—I did.

Where did you see him?—The first I saw of him was in a post chaise, in *Fleet-street*, in custody.

Did you upon that go to *Evans's house*?—I did.

Did you take away from that house any thing which belonged to *Binns*?—I took away a box, which I understood—

Did you take away any thing which you

now know, of your own knowledge, or from the information of *Binns*, to have been his property?—I cannot say I do.

You took a box away from *Evans's house*, in consequence of seeing *Binns* in custody, in *Fleet-street*?—I did.

Where is that box?—I do not know.

Should you know it if you saw it again?—I believe I should.

Did you see it seized by Mr. *Schaw*, at Messrs. *Sidebottom* and *Cook's chambers*?—I did.

Did Mr. *Schaw*, the messenger, take you and that box to *Whitehall*?—He did.

Was the box there broke open in your presence?—It was open when I went into the council chamber.

Was it shut at the time Mr. *Schaw* and you went to the office?—Yes.

When you went into the office you found it open?—To the best of my recollection it was the second time I was called into the office that I found it open.

John Jones, cross-examined by Mr. Dallas.

Was this box locked or open when it was taken away from Mr. *Evans's*?—It was fast.

Was it kept fast at *Lincoln's Inn*?—Yes.

How long did it remain in your possession before it was seized by the messenger?—About a week.

I think you said you seized and took this box away after you saw *Binns* in custody, in a post chaise, in *Fleet-street*?—Yes.

Mr. Garrow.—Did you seize it adversely, or take it under your care?—I took it under my care.

And while it was under your care, at Mr. *Sidebottom's*, it was seized by the messenger?—Yes.

Are you acquainted with Mr. *Binns's* handwriting?—I have seen him write, but am not acquainted with his manner of writing.

Mr. John Schaw sworn.—Examined by Mr. Garrow.

Did you upon Thursday, the 8th of *March* last, seize a box at Messrs. *Sidebottom* and *Cook's*, and apprehend the last witness, *Jones*?—Yes.

Did you take both the box and the witness to the Secretary of state's office?—Yes.

Was the box fast locked when you carried it to the Secretary of state's office?—It was.

Did you see it broken open there?—I assisted in breaking it open.

Where is the box?

[The box was produced in Court.]

John Jones called again.—Examined by Mr. Garrow.

Upon seeing *Binns* in custody, you went to *Evans's house*?—I did.

To whose apartment did you go there in order to take away this box?—To the apartments that I understood to be—

Mr. Plumer.—Do not tell us what you understand.

Mr. Garrow.—Do you know either of your own knowledge, or from the prisoner Binns, or from the information of any person in the presence of Binns, whose apartment that was?—I do not.

Do you know of your own knowledge, or from Binns, to whom that box belonged?—I do not.

Nor to whom the apartment belonged in which it was found?—No.

Had you ever seen Mr. Binns in the apartment in which this box was found?—Never.

Mr. Garrow.—I believe your lordship may relieve your note from what Schaw and Jones have said.

Benjamin Hall sworn.—Examined by **Mr. Garrow.**

I believe you live in Down-street Piccadilly?—I do.

Do you know the prisoner, Mr. O'Connor?—Yes, I do.

Did he, by the recommendation of any person, and whom, apply to you for any article in which you deal?—Yes.

What business are you?—A saddler.

By whom was he recommended to you?—Sir Francis Burdett.

Have you seen any saddlery articles, that are stated to have been seized at Margate?—I have.

Did you finish the holsters?—Yes.

And saddle?—There are two saddles, and I made two saddles for Mr. O'Connor, in 1796, these were made the latter end of January last.

Are they in the packages in which you packed them?—I packed them in a case, I believe that to be the same case.

Did you you put any direction on them?—Yes, I directed them to Arthur O'Connor.

You did not direct them to Colonel Morris?—No.

Is that your bill?—Yes.

Benjamin Hall cross-examined by **Mr. Dallas.**

You said you had made two saddles for Mr. O'Connor, in 1796?—Yes.

These, I observe, were made the latter end of January, 1798?—Yes, and delivered I believe upon the 3rd of February.

You were desired to be expeditious with them, for the purpose of his taking them with him?—Yes.

Benjamin Hall cross-examined by **Mr. Ferguson.**

Are those hunting saddles?—Yes.

Is it not a common thing to make holsters for persons that are not military men?—We do frequently.

You saw the pistols that were with them?—Yes.

They are not military pistols?—No.

Mr. Garrow.—We might call other wit-

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nesses to prove the hats and other articles furnished for Mr. O'Connor, but it is hardly necessary, but I will call one more.

Mr. Justice Buller.—Is the direction upon them which you put there?

Mr. Garrow.—No, that is taken off.

Oswald Strong sworn.—Examined by

Mr. Garrow.

You are foreman to Messrs. Muoys and Davies, hatters in St. James's-street?—Yes.

Have you seen those hats which have been represented to have been seized at Margate?—I have.

Were they furnished by your house, and for whom?—Yes, for Mr. O'Connor.

Were the packages in which they are now, the packages in which they were sent from your house?—I think they are.

You did not put any address to colonel Morris?—No, I did not know any such person.

Mr. O'Connor.—This was not an unusual order, you have furnished me before with as many as this, at a time?—We have.

Mr. O'Connor.—Do you recollect how many you furnished me with the last time?—In September, 1796, you had three or four hats.

Mr. O'Connor.—Had I not a black cockade the same as that; was not it a military hat?—The last cocked hat you had was covered with silk oil skin.

And a military hat?—Yes, it was.

Mr. Justice Lawrence.—Do you say these are the packages that you put them in?—I think they are.

John Revett called in again.

Mr. Garrow.—Look at this printed paper upon which you have put your name, did you find that upon the prisoner O'Coigly?—I found that upon the person of the prisoner O'Coigly.

Mr. Garrow.—This paper imports to be "The Declaration, Resolutions, and Constitution of the Societies of United Irishmen." We do not wish to trouble the Court with hearing the Declaration read: we only propose to read the Constitution, the Test, and the names of the several committees which follow.

Mr. Plumer.—We shall desire to have some other parts of it read.

Mr. Garrow.—Then we will have the whole of it read.

Mr. Plumer.—There are committees formed in every district, comprehending all the different inhabitants of the different places; I wish to have it understood, that if Mr. O'Connor had been a member, from the extent of the plan, it must be generally known.

Mr. O'Connor.—I wish to have it read, that the jury may see how impossible it was for me to belong to a society of that kind without being detected, especially after the seizures which have been made in Ireland; I, as one, should wish to have it read.

[It was read.]

"THE DECLARATION, RESOLUTIONS, AND CONSTITUTION OF THE SOCIETIES OF UNITED IRISHMEN."

"DECLARATION AND RESOLUTIONS."

"IN the present great Era of Reform, when unjust Governments are falling in every quarter of Europe; when Religious Persecution is compelled to abjure her Tyranny over Conscience; when the Rights of Men are ascertained in Theory, and that Theory substantiated by practice; when Antiquity can no longer defend absurd and oppressive Forms, against the common sense and common Interests of Mankind, when all governments are acknowledged to originate from the People, and to be so far only obligatory, as they protect their Rights and promote their Welfare;—We think it our Duty, as Irishmen, to come forward, and state what we feel to be our heavy Grievance, and what we know to be its effectual Remedy.

"WE HAVE NO NATIONAL GOVERNMENT.—We are ruled by Englishmen, and the Servants of Englishmen, whose object is the Interest of another Country; whose Instrument is Corruption, and whose Strength is the Weakness of IRELAND; and these Men have the whole of the Power and Patronage of the Country, as Means to seduce and subvert the Honesty of her Representatives in the Legislature. Such extrinsic Power, acting with uniform Forces in a Direction too frequently opposite to the true Line of our obvious Interests, can be resisted with effect solely by the *Unanimity, Decision, and Spirit* of the *People*.—Qualities which may be exerted most legally, constitutionally, and efficaciously, by that great measure, essential to the Prosperity and freedom of Ireland—*AN EQUAL REPRESENTATION OF ALL THE PEOPLE IN PARLIAMENT*.

"We do not here mention as Grievances, the Rejection of a Place Bill, of a Pension Bill, of a Responsibility Bill; the Sale of Peerages in one House, the Corruption publicly avowed in the other, nor the notorious Infamy of Borough Traffic in both; not that we are insensible of their Enormity, but that we consider them as but Symptoms of that mortal disease which corrodes the Vitals of our Constitution, and leaves to the People, in their own Government, but the Shadow of a Name.

"Impressed with these Sentiments, we have agreed to form an association, to be called *THE SOCIETY OF UNITED IRISHMEN*; and we do pledge ourselves to our Country, and mutually to each other, that we will steadily support and endeavour by all due Means to carry into effect the following Resolutions:—

"**FIRST**—Resolved—That the weight of English influence in the Government of this Country is so great, as to require a cordial Union among ALL THE PEOPLE OF IRELAND, to maintain that balance which is essential to the preservation of our Liberties and extension of our Commerce.

"**SECOND**—That the sole Constitutional Mode by which this Influence can be opposed, is by a complete and radical Reform of the Representation of the People in Parliament.

"**THIRD**—That no Reform is practicable, efficacious, or just, which shall not include Irishmen of every Religious Persuasion.

"Satisfied, as we are, that the intestine Divisions among Irishmen, have too often given encouragement and Impunity, to profligate, audacious, and corrupt Administrations, in Measures, which, but for these divisions, they durst not have attempted—We submit our resolutions to the Nation, as the Basis of our Political Faith.

"We have gone to what we conceive to be the Root of the evil—we have stated what we conceive to be the *Remedy*. With a Parliament thus Reformed, every thing is easy—without it nothing can be done: And we do call on, and most earnestly exhort our Countrymen in general, to follow our example, and to form similar Societies in every quarter of the Kingdom, for the promotion of Constitutional Knowledge, the abolition of Bigotry in Religion and Politics, and the equal distribution of the Rights of Man throughout all Sects and Denominations of Irishmen. The People, when thus collected, will feel their own Weight, and secure that Power which Theory has already admitted as their portion, and to which, if they be not aroused by their present Provocations to vindicate it, they deserve to forfeit their pretensions for ever.

"THE Societies of UNITED IRISHMEN, ardently desiring, that the *unawed, unhired, and honest* part of the Community, should become one great Society of UNITED IRISHMEN, are of Opinion, that a general Code of Regulations is absolutely necessary to accomplish that important end. For this purpose, they have, after mature deliberation, adopted the following *Constitution* and *Test*, the adoption of which is necessary for such Societies as wish to enter into communication and correspondence with those already established.

"It is earnestly recommended to Societies to establish a BARONIAL COMMITTEE in a central part of each Barony, or such other district as may be thought proper, for the purpose of corresponding with each other, by Deputation or otherwise. The Societies of each Barony to be numbered according to seniority, and the number of Members to be returned to the Secretary of the Baronial Committee quarterly.

"New Societies should be established by a deputation from an old one, who are to see a Secretary appointed and attested according to the Secretaries' Test.

"The blanks in the Constitutional Code are to be filled agreeably to the opinion and convenience of each Society."

"CONSTITUTION.

"1st. THIS Society is constituted for the purpose of forwarding a brotherhood of Affection, a communion of Rights, and an union of Power among Irishmen of

"EVERY RELIGIOUS PERSUASION;

"and thereby to obtain a complete Reform in the Legislature, founded on the Principles of Civil, Political, and Religious Liberty.

"2d. The Members of this Society shall either be ordinary or honorary, and shall not be limited to any description of Men, but to extend to all persons who may be deemed eligible.

"3d. Every Candidate for admission into this Society, shall be proposed by one Member, and seconded by another, both of whom shall vouch for his Character and Principles, and whose name shall be entered in the books of the Society. The Candidate to be ballotted for on the Society's subsequent Meeting, and if one of the beans be black, he shall stand rejected.

"4th. As a Fund is necessary, the better to carry into effect the Purposes of this Association, each Member on his admission, shall pay to the Society the sum of

"and per Month while he shall continue a Member.

"5th. The Officers of this Society shall be a Secretary and Treasurer, who shall be appointed by ballot every three Months, viz. on every first Meeting in November, February, May, and August.

"6th. This Society, in manner aforesaid, shall appoint two Members, who, with the Secretary, shall act for the Society in a Baronial Committee, which Members shall receive on each night of their attendance on said Committee.

"7th. This Society shall, in manner aforesaid, appoint Members, who, with the Treasurer, shall form a Committee of Finance, &c.

"8th. At the request of either Committees, or any Members signing a Requisition, the Secretary, or if he shall be absent, the Treasurer, shall call an extra Meeting of the Society.

"9th. This Society shall meet in ordinary every second evening, at o'clock, the President to be chosen by a majority of the Members present, of whom shall be a quorum.

"10th. Every respect and defence shall be paid to the Chairman. On his rising from his seat, and taking off his hat, there shall be silence, and the Members seated: He shall be Judge of Order and Propriety; shall grant leave of Absence at pleasure; shall not enter into Debate. If any Member behave improperly, he is empowered to direct an apology, or if refractory, fine him in any sum not exceeding

"and on refusal to do as directed, he shall therefore be expelled the Society for

"11th. No Member shall speak more than twice to one question, without leave from the Chairman.

"12th. Every Person elected a Member of this Society, whether ordinary or honorary, shall, previous to his Admission, take the following Test, in a separate Apartment, in the presence of the persons who proposed and seconded him, and one Member appointed by the Chairman; or in case of Absence of one of the two persons, the Chairman shall appoint another Member to act for the Absentee; after which the new Member shall be brought into the body of the Society, and there take the Test in the usual form.

"TEST.

"IN the awful Presence of GOD,

"I, A. B. do voluntarily declare, that I will persevere in endeavouring to form a Brotherhood of Affection among IRISHMEN of every Religious Persuasion, and that I will also persevere in my Endeavours to obtain an Equal, Full, and Adequate Representation of all the People of Ireland. I do further declare, that neither Hopes, Fears, Rewards, or Punishments, shall ever induce me, directly or indirectly, to inform on, or give Evidence against any Member or Members of this or similar Societies, for any Act or Expression of theirs, done or made collectively or individually, in or out of this Society, in pursuance of the spirit of this Obligation.

"13th. A member of any other acknowledged Society being introduced to this Society by a Member, shall, upon producing a Certificate, signed by the Secretary, and sealed with the seal of the Society to which he may belong, and taking the foregoing Test, be admitted to attend the Meetings of this Society.

"14th. No Member shall have a Certificate but by applying to the Committee; who shall not grant it unless the Member is leaving his place of residence, which Certificate shall be lodged with the Secretary on his return.

"15th. When this Society shall amount to the number of thirty-six Members, it shall be equally divided by lot; that is, the

"Societies in country places to divide as may best suit their local situation.

"Names of all the Members shall be put into a hat or box, the Secretary or Treasurer shall draw out eighteen individually, which eighteen shall be considered the Senior Society, and the remaining eighteen the Junior, who shall apply to the Baronial Committee, through the Delegates of the Senior Society, for a number, and that this division shall take place only in the Months of October, January, April, and July. The fund shall also be equally divided.

"16th. That no Society shall be recognized by any Committee, unless approving of, and taking the Test, and amounting in number to seven Members."

"ORDER OF BUSINESS AT MEETINGS.

"1st. New Members read Declaration and Test, during which Subscriptions to be collected.

"2d. New Members take the Test, all Members standing and uncovered.

"3d. Minutes of preceding Meeting read.

"4th. Reports of Committees received.

"5th. Communications called for.

"6th. Candidates Ballotted for.

"7th. Candidates proposed.

"8th. Motions made and determined.

"9th. Place and time of next Meeting appointed."

"CONSTITUTION OF COMMITTEES,

"AS ADOPTED THE TENTH OF MAY.

"BARONIAL COMMITTEES.

"1st. WHEN any Barony or other District shall contain three or more Societies, three persons from each shall be elected by Ballot, conformable to the sixth Article, to form a Baronial Committee (for three Months); their Names to be returned to the Secretary of the Senior Society, who shall request a Deputation from the nearest Baronial Committee to constitute a Committee for the said Barony or other District.

"2d. When any Barony or District shall contain eight Societies, they may form another Committee, to be called the Second Committee of said Barony or District, provided each contains three or more Societies.

"3d. Baronial Committees shall receive Delegates from Societies of a contiguous Barony, provided said Barony do not contain three Societies.

"4th. That the Baronial Committee shall correspond with Societies or Individuals, who have subscribed the Declaration and taken the Test of the present associated Societies.

"5th. That all Questions shall be determined by a Majority of the Members present.

"6th. That the Baronial Committee be-

ing regularly summoned, the one-third of its Members shall be deemed a Quorum, and capable of proceeding to business.

"7th. That any Business originating in any individual Society, shall at the instance of such Society's Delegates, be by the Baronial Committee laid before the other societies."

"COUNTY COMMITTEES.

"1st. WHEN any County shall contain three or more Baronial Committees, two Persons shall be elected by Ballot from each Baronial Committee to form a County Committee (for three months.)

"2d. County Committees shall receive Delegates from Baronial Committees of adjacent Counties, if said Counties do not contain three Baronial Committees."

"PROVINCIAL COMMITTEES.

"1st. When two or more Counties shall have County Committees, three Persons shall be elected by Ballot from each to form a Provincial Committee (for three Months).

"2d. Delegates from County Committees in other Provinces will be received, if such Provinces do not contain two County Committees."

"NATIONAL COMMITTEE.

"THAT when two Provincial Committees are formed, they shall elect five Persons from each by Ballot to form a National Committee."

"Societies first Meetings in November, February, May, and August, to be on or before the 5th. Baronial Committees on or before the 8th. County Committees on or before the 25th of the above months.

"Baronial, County, and Provincial Committees, shall meet at least once in every Month, and report to their Constituents.

"Names of Committee-men should not be known by any Person but by those who elect them.

"TEST.

"For Secretaries of Societies or Committees.

"IN the awful presence of God. I, A. B. do voluntarily declare, that as long as I shall hold the Office of Secretary to this I will to the utmost of my Abilities faithfully discharge the Duties thereof.

"That all Papers or Documents received by me, as Secretary, I will in, safety keep; I will not give any of them, or any Copy or Copies of them to any Person or Per-

"sons, Members, or others, but by a Vote
 "of this ; and that I will
 "at the expiration of my Secretaryship, de-
 "liver up to this all
 "such Papers as may be then in my posses-
 "sion."

—
"CERTIFICATE.

"SOCIETY OF UNITED IRISHMEN,
 "of ———

"I HEREBY certify, that A. B. has been
 "duly elected, and having taken the Test pro-
 "vided in the Constitution, has been admit-
 "ted a Member of this Society."

N.

Sec.

John Revett cross-examined by Mr.
 Ferguson.

Besides this printed paper and the passport, did you find any other printed paper upon Mr. O'Coigly?—I found a number of printed papers which I marked at the duke of Portland's office.

Are they here?

Mr. Garrow.—We are ready to hand them over to you; if you wish to have them read, we can have no objection.

Mr. Ferguson.—I should wish to have the titles of them read if you please.

Mr. Plumer.—Merely to show that this paper was among a number of other printed papers.

Mr. Garrow.—We do not know of any other printed paper but a French newspaper which I hold in my hand dated the third and fourth of September, 1793.

Mr. Ferguson.—Do not you recollect seeing the duke of Richmond's letter to colonel Sharman?—No.

And Mr. Pitt's speech at the Thatched House?—No.

Mr. Henry Maryon sworn.—Examined by
 Mr. Garrow.

Look at these four manuscript papers where did you find them?—In Mr. O'Connor's house at Belfast, my name is upon each of them.

Mr. Garrow.—We do not propose to read these—it is mark enough for you, that there are four papers signed Henry Maryon, found at Mr. O'Connor's house in Belfast.

Mr. Plumer.—When did you find these?—On the 7th of January, 1797.

That was before Mr. O'Connor was apprehended?—No, some time after he was taken up in Dublin.

Was it while he was in confinement that you went to his house at Belfast, and seized all his papers, and these among the rest?—I think it was while he was in confinement.

Amongst his papers you found these?—Yes.

You are a constable are are not you?—No, I am one of his majesty's messengers.

The papers you seized, you showed to the Secretary of state in Ireland, in January 1797?

—Yes, but at the time I took them I marked them.

Do you know when Mr. O'Connor was let out of prison?—I do not recollect.

Mr. O'Connor.—Do not you know that I was a considerable time in prison after these had been taken, and had been put in the custody of the Irish government?—Yes, certainly.

Mr. O'Connor.—Do not you believe I was six months in prison subsequent?—Yes.

Mr. O'Connor.—Did you not hear I was discharged after six months imprisonment without any prosecution?—I understood you were discharged by giving bail.

Mr. O'Connor.—You never heard that there had been any prosecution?—No, I never heard that you were prosecuted.

Mr. O'Connor.—Did you hear that that was an uncommonly severe confinement—totally solitary?

Mr. Garrow.—We cannot hear the witness's judgment upon the severity or the propriety of the confinement.

Mr. O'Connor.—Has it escaped your knowledge that I was in that state in close confinement?—I have said that.

Mr. O'Connor.—That I was not allowed to have a single person to come near me, did you not know that?—I do not know it.

Mr. O'Connor.—And pen ink and paper denied me?—I never heard that it was so.

Mr. Attorney General.—Here I shall close the case on the part of the Crown.

Mr. Justice Buller.—Do the prisoners choose to say any thing themselves, and will they do it before or after their counsel speak?

Mr. Dallas.—Your lordship will see that the mode which is adopted, is in order to save the time of the Court. After the opening of the case of Mr. O'Connor, and Mr. O'Coigly for whom Mr. Plumer is of counsel, the gentlemen with me will state the respective cases of Binns, of Allen, and of Leary.—We shall then call our witnesses, and I shall then sum up the whole of the evidence, so that the Court will only be troubled with one speech for each of the prisoners.

[It being now near 12 o'clock at night, the officers were sworn in the usual form to attend the jury, who all slept in one large room—and the Court adjourned to 8 o'clock the next morning.]

On Tuesday, May the 22nd, 1798, the Court met, pursuant to adjournment, at eight o'clock in the morning.

Present.—The right hon. lord Romney; the hon. Mr. Justice Buller; the hon. Mr. Justice Heath; the hon. Mr. Justice Lawrence; and Mr. Serjeant Shepherd.

The prisoners were set to the bar.

Mr. Plumer.—May it please your Lordships, and Gentlemen of the Jury; I address you upon this occasion with a degree of anxiety which I never felt before. When I consider what is to be the result of this day's deliberation, and what important consequences are involved in your decision; when I consider the nature of the accusation against these unfortunate gentlemen, and under what circumstances it is brought forward, it is impossible, gentlemen, that I should not address you with the deepest anxiety. Various difficulties present themselves in the way of the defense,—the nature of the charge, interesting as it naturally must be to every Englishman, and affording great danger of confounding the accused with the accusation,—the temper of the times,—the place where this subject is made matter of inquiry,—the prejudices that have been attempted to be raised against the unfortunate gentlemen who are now standing before you, not on the part of the prosecution or by any body concerned in it, but by wicked and foolish men, who are weak enough to suppose that the public safety is interested in the conviction of these men, right or wrong, let the evidence be what it may,—and let me add, gentlemen, my fears, that it is impossible that you can live in the world, and live in this county in particular, exposed, as from its situation it is, to the threatened invasion of the enemy, without, in some respects, feeling that these topics have been too successfully urged. But gentlemen, I say that you are all impressed with the importance of the duty which belongs to you, and I am thoroughly convinced will suffer no endeavours of any kind to warp your judgments, or prevent these men from receiving at your hands, (which is all they ask), a fair and impartial trial; that you will hear their case, as they have a right to have it heard, in this stage of the proceeding, with every presumption of their innocence, till the contrary is established by a verdict of a British jury.

Gentlemen, that the public have a great interest that crimes should not pass with impunity; and that this crime in particular, the highest that a subject can commit, should in all cases, meet with the punishment it justly merits, I do not in the least mean to controvert; but gentlemen, I am persuaded it will be equally admitted on the other side, that there is an interest which the public have in common even with these unfortunate persons, a much greater and more important interest that those who are under accusation should have a fair trial, and should not be convicted unless their guilt be established by clear and indisputable evidence, leaving no reasonable ground of doubt upon the mind of the jury; that I say, is a much broader and a more permanent interest than any the public can have in the conviction of any individual,

where the inquiry concerns, as in the present case, mere question of fact, not involving, in any way of considering the subject, any general principles of law; because, in the safety of these men, if they are innocent, that of every individual is implicated; the character and honour of British justice is at stake, which is deeply violated not only if in any instance an innocent man should be convicted, but also if a person should be convicted without a fair trial, without an unprejudiced consideration of the subject, and where the evidence does not clearly and fairly make out the proof of the specific charge alleged against him, so as to leave no doubt upon the mind of the jury.

Gentlemen, I am persuaded you go along with me in adopting these general principles, which I am sure, I feel in common with the gentlemen concerned on the other side, and unquestionably with the Court, that these are the principles, upon which every individual in a British court of justice stands upon the issue for his life or death, entitled to every presumption in his favour, entitled to have the charge against him made out clearly and indisputably, before he can be subjected to the consequences of a conviction.

Gentlemen, there is one subject in the outset of this business, from which I am anxious to deliver your minds, and the minds of all who hear me. I am not instructed on the part of the accused, in any respect, to complain upon that subject, which was made the first topic of the introduction in my learned friend's address to you. He was anxious to show that he was called upon by imperious necessity (as I think he stated) to bring this charge under the consideration of the country, in order that a matter might be fully investigated, in which the public interest was so deeply concerned.

Gentlemen, I freely admit, whatever be the issue of this day's decision, and I trust it will be favourable, I am not entitled to complain that this case has been made the subject of public inquiry: on the part of the defendants I rejoice that it has been so, and that that inquiry has been conducted with the industry employed by the prosecutor, bringing out by parol or written evidence, every circumstance that could bear upon the subject; unquestionably those concerned for the crown were called upon to act by the suspicious circumstances, in which, I admit, these persons were found; I am not attempting to conceal the imprudent and improper conduct of some of them, a conduct, however, very naturally accounted for, without any inference of guilt, from the alarm and apprehension of persons taken up on a charge like this; but under such circumstances undoubtedly it did become necessary that the matter should be publicly inquired into and probed to the bottom; but gentlemen, after the subject has been fully inquired into, after you have had the satisfaction of knowing that nothing has

been concealed, that the prosecutors have been in possession for weeks and months, of all the means of discovery; that they have brought before you, with proper and laudable industry, parol witnesses, not less I think than forty in number, that every scrap of paper to which they have got access, has been produced, every quarter of this and another kingdom ransacked, properly ransacked, to adduce every piece of evidence and every witness that could be brought: I trust gentlemen, I am warranted in saying, after all this, you are not to add any prejudices, presumptions, or suppositions, beyond the fair result of what is before you, or to suspect that there is anything still remaining behind; and still less if, in the result of all that you have heard, there is nothing of that clear and convincing evidence, necessary to substantiate a charge like the present, that you ought to convict upon the ground of any latent suspicion, or because some matters are not satisfactorily cleared up. Some doubts remaining upon parts of the case, and upon some documents produced by the prosecutor, which the prisoners may not be able fully to explain; give me leave to observe, that it is not incumbent upon the prisoners, in any case, to explain on their part, it is incumbent upon the prosecutor to prove; if, in the result, it should remain a matter of doubt, matter of mystery, as my learned friend stated, it is not incumbent upon the prisoners, at the peril of conviction, to clear it up and explain it, and it would be very hard if it were so. If the case remains doubtful, unexplained, and mysterious, you are not in a doubtful, in an unexplained, and in a mysterious case to convict; but the prisoners are entitled to the presumption in their favour that they are innocent, unless the contrary be established by proof; therefore, gentlemen, in every part of the case, where there is a defect of proof on the part of the prosecution, I rely upon the general presumption, that the law makes in favour of innocence, and on the right which every defendant has, in every case, to expect full proof on the part of the prosecution, before he shall be subject to condemnation.

Gentlemen, I do not stand here to deprecate your vengeance, if the fact be clearly established; I am not instructed on the part of the prisoners, to palliate this dreadful offence; or to say that any person, who has been guilty of it, does not justly merit death in its most dreadful form; but conscious of their innocence, called upon here, strangers in the county, the natives of another kingdom, at a distance, and fugitives unfortunately from that country, and in the act of becoming so from this; still they know, with what confidence they may rely upon the integrity of a British jury; that you will not suffer any unjust prejudices to operate against them; that you will weigh all the circumstances fairly; and that if in the result, you find all the circumstances, that naturally have pro-

duced suspicion against them, are either cleared up, or that in the result, they are not fairly imputable to them, to the extent pressed; they are perfectly convinced, gentlemen you will make a just and true deliverance of them. They have put their all upon the stake of this day's event; they have not attempted to split or divide the case; they have not availed themselves of their right of separate challenge; but they have all come before you at once: they have committed into your hands altogether, their lives, and every thing that is dear to each of them; because they are perfectly assured, that whenever a British jury have to consider a case like the present, they will be governed by all those principles which form the safeguards of the subject; and which, for the sake of all, the law, in every case, throws around the person who stands in the awful situation of these prisoners.

Gentlemen, in the duty I have to discharge, painful and distressing as it is, it is a great consolation to me to reflect, that the case I have to discuss, involves no difficulty in point of law. I shall not dispute any one principle of law contended for on the other side; and I trust I shall not state any that can admit of the smallest doubt: the law is perfectly well settled, and it is not my duty, and certainly not my inclination, to attempt to unsettle those solid principles, and those decisions which have for ages established what is the law applicable to the present subject.

Gentlemen, it is also some consolation to me, though appearing for one gentleman in particular, who stands in a very unfortunate predicament indeed, because he is in some respect placed in this situation by a circumstance that deprives him of the assistance of the greatest talents that might have been exerted on his behalf; but it is I say, a consolation to know, that the present case is not one of that nature which calls for the exertion of those great talents which have been successfully exerted upon other occasions. The present is a plain simple question of fact. The task, therefore, is of an humbler nature, and better suited to the talents of him who addresses you.

In the discharge of this duty, I shall not attempt to have recourse to any extraneous topics. I shall endeavour to simplify the subject, and to present it unentangled before you. I shall consider the nature of the charge itself, the evidence which is necessary to support it, the principles by which an inquiry of this kind must be conducted, and the evidence that has been adduced on the part of the prosecution, in support of it; and, gentlemen, it is a great satisfaction to me to reflect, that although every defect of mine, will be supplied by those who follow me; yet, that in the present, and in all similar cases, the aid of counsel is not necessary. Those who stand under accusation, have better counsel to assist and stand by them, in the perilous

day of trial; they have the Court for their counsel; they have the great security and protection of all the general principles of the law: those sacred principles which are so well described by a noble and learned judge, in an address to the House of Lords, upon an occasion like the present. I mean lord Nottingham, at the trial of lord Cornwallis. "I know your lordships (said he) will weigh the fact with all its circumstances from which it is to receive its proper doom. Your lordships are too just to let pity make an abatement for the crime, and too wise to suffer rhetoric to make any improvement of it. This only will be necessary to be observed by all your lordships, that the fouler the crime is, the clearer and the plainer ought the proof of it to be. There is no other good reason can be given why the law refuses to allow the prisoner at the bar counsel, in matter of fact (which was the case at that time) when life is concerned, but only this;"—mark gentlemen what is stated by this great judge:—"because the evidence by which he is condemned, ought to be so very evident, and so plain, that all the counsel in the world should not be able to answer it." Gentlemen, remember that principle, and carry it along with you in the present inquiry. You will hereafter, apply it to the evidence which has been adduced on the part of the prosecution, and see whether it in any respect, comes up to the criterion, and the test which this great and excellent judge has laid down upon the subject.

Gentlemen, in examining the charge, it is of the greatest importance, that you should carefully distinguish what is the precise nature of the charge, what is the gist of it, what it is that is necessary to be proved, without which, the charge must fall to the ground; and to separate what is mere matter of form, which must accompany the charge, from that which constitutes the principal nature of the accusation. In an indictment for treason, the nature of the charge is, the imagination and thought of the mind; therein consists the guilt, and all the rest is mere matter of evidence, to prove it; but such an inquiry is obviously liable to great difficulty in the prosecution of it. And on the one hand, where the safety of the public is protected by making the mere imagination and thought, *voluntas pro facto*, in this instance, as it is not in any other, penal, in the extreme, the law on the other hand has protected the subject, by requiring that he should not be convicted without clear proof of some overt act, manifesting that intention, and showing that it is actually begun to be carried into execution, and gentlemen, here you will recollect what are the words of the statute, upon which the present indictment is grounded.

The statute of Edward 3rd, the great statute that has fixed the law of treason for four centuries and a half, in that part which applies to the present inquiry, states that "any person who is adherent to the king's

enemies in his realm, giving to them aid and comfort in the realm, or elsewhere and thereof"—now attend to these words gentlemen—"and thereof be *provably attainted of open deed* by people of their condition." It is not enough that there should be an imagination to adhere to the king's enemies; if it rests merely in an abstract thought of the mind, never carried or attempted to be carried into execution (for I admit that if a single act has been done towards carrying into execution the intent, that is sufficient; it is not necessary it should by actually perpetrated) but if there be no act done, consequent upon it, or if the act that is done, is not most clearly referable to that intent, and proving it, if the prisoners are not provably attainted of open deed by people of their condition, then, gentlemen, they are not guilty to the extent of this indictment. They are not to be convicted of being adherent to the king's enemies in the realm, unless they be provably attainted of it of open deed.

Now, gentlemen, remember what is the construction that has been put upon this statute: I shall beg you to attend to the words of a great judge, in commenting upon this statute, which can never be too often repeated, whenever this statute is made the subject of inquiry. I mean, gentlemen, the explanation of it given by my lord Coke: "By provably," says that great judge "is meant, that it is upon *direct and manifest proof* not upon *conjectural presumptions or inferences*, or strains of wit, but upon *good and sufficient proof*—and herein the adverb provably hath a great force, and signifieth a direct plain proof, which word the Lords and Commons, in parliament, did use; for that the offence of treason was so heinous, and was so heavily and severely punished as none other the like, and therefore the offender must be provably attainted, which words are as forcible as upon direct and manifest proof.—Note, the word is not probably, for then *commune argumentum* might have served, but the word is provably be attainted."

I request, gentlemen, that you would carry along with you, throughout this inquiry, this test, this guide, which is to conduct your judgment in pronouncing upon the evidence before you. Remember it must be direct and manifest proof, not upon conjecture, or presumptions, or inferences, or strains of wit. I trust you will find that the prosecutor here does rely altogether upon *conjecture and presumptions*, in the main part of the charge I mean, and not upon direct and manifest proof of his charge; mere conjecture and presumptions, and inferences, which are not fairly warranted by the evidence before you.

Gentlemen, I shall beg you likewise to pay attention to what my lord Hale says upon this subject; he states, "That, although the crime of high treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to

the government, peace, and happiness of a kingdom or state, and therefore is deservedly branded with the highest ignominy, and subjected to the greatest penalties that the laws can inflict.—It appears first how necessary it was that there should be some known, fixed, and settled boundary for this great crime of treason, and of what great importance the statute of 25 Edward 3rd, was in order to that end. Secondly, how dangerous it is to depart from the letter of that statute, and to multiply and inhance crimes into treason by ambiguous and general words, such as accroaching of royal power, subverting fundamental laws, and the like—and thirdly, How dangerous it is by construction and analogy to make treasons where the letter of the law has not done it—for such a method admits of no limits or bounds, but runs as far and as wide as the wit and invention of accusers, and the odiousness and detestation of persons accused, will carry men.”

Upon these general principles it is that I conceive this inquiry must be conducted; they are recognized in every trial, they are ratified upon every occasion by the greatest authorities that have ever presided upon inquiries like the present, and no case has been, of late years, conducted (to the honour of the present times I state it) without enjoining the observance of them on those who are to decide upon it. If it be necessary that there should be overt acts proved, to manifest the intent, it is obvious what the nature of these overt acts must be; viz. such as plainly evidence the intent charged, not acts indifferent in themselves, not acts that are equivocal—not such as are referable to an honest, a just, and a lawful motive,—or if they be acts of this latter description, that there must be clear evidence—*aliunde*—from other circumstances—to fasten the particular intent charged, in order that the reason and principle of the law may be answered. The reason why the law requires proof of overt acts in high treason, is on two accounts.—First, that the intent should be manifest; and next, that it should have proceeded to the length of being at least begun to be carried into execution.

But if you take an act, that is indifferent in itself, such for instance as the going abroad by a number of persons, and inquire whether that going abroad be treason or not? it is necessary that it should be proved to be done with the intent, and, for the purpose charged; and the inquiry in that case is not whether the acts charged to be done were done or not, but the main substantial point of the inquiry is, whether they were done with the intent and for the purpose, that is the subject of the charge? These you find the intent and the purpose constitutes the principal part of the charge. The acts may be all admitted to have been done, as in the instance in question, that a number of persons did altogether agree to go abroad, that they did so under circumstances lawful or not, so matter which,

for the purpose of the present subject,—if the latter, that accounts for all the circumstances of concealment, and endeavours to get secretly out of the kingdom, but this forms but a small part of the subject. You are to inquire not simply whether these acts were done? not simply whether the prisoners treated with Jeremiah Mowle, and with Foreman and Norris, for a vessel within the county of Kent?—Not simply whether these acts were done for the purpose and intent stated, namely, with an intent to go abroad, which the acts naturally import, and respecting which you have heard so much evidence? But there remains behind a farther subject of inquiry, in which is contained all the question between us; and upon which all the guilt is to fasten, namely, *whether there was an ulterior intent to carry intelligence to the enemy? TO CARRY A PAPER TO THE EXECUTIVE DIRECTORY OF FRANCE, FOR THE PURPOSE OF INVITING AN INVASION OF THE KINGDOM OF GREAT BRITAIN?*

Now, gentlemen, in a case of this nature, you will carefully distinguish between the proof of the acts themselves, and the proof of the intent, that is fastened upon them; and yet when you examine, what is all the laboured detail of proof on the part of the prosecution? What is spoken to by all the witnesses who have been called? What is all the written evidence, that has been collected? with the exception of one paper only, you will find all the rest of the evidence goes to prove merely what is not disputed; that Mr. Binns, and, if you please, under circumstances that have fairly been made out, with the knowledge, with the privacy, and on the behalf of others, did make certain treaties at Whitstable and at Deal, with the different persons who have been called, for the hire of a vessel to go to parts beyond the seas, as stated in the indictment. Well, gentlemen, what then? What would be the fair result of all this?—Guilty of what?—Guilty of an intent to go abroad. These are overt acts of that intent, not that they, or any one of them, actually did go abroad, but that from the acts done, the treaties that were entered into with a view to it, you are to collect this inference.

If you were called upon here to say, guilty, or not guilty, of certain overt acts, manifesting an intent to go abroad; if with respect to certain of the prisoners (not Mr. Binns, undoubtedly, for whom I am not counsel, but whom the evidence seems fairly to have acquitted of any intent himself personally to go abroad) but with respect to the other four persons, if the questions were, whether they did, or did not, in the month of February, meditate and intend to go out of the kingdom, upon the day stated, and in the manner stated, to certain parts beyond seas,—if that were the subject of charge, and all the charge, I should certainly admit that a great body of evidence had been adduced on the part of the prosecution, and that in the result you would

be fairly warranted in saying, we must pronounce a verdict against these four persons, *guilty of an intent to go abroad*. But, gentlemen, is that the subject of inquiry? Is that high treason? Persons may lawfully go to parts beyond the seas, and there may be circumstances that may make it unlawful to go to parts beyond the seas. It is not lawful for an English subject to go to some parts beyond the seas now: for it is made the subject of prohibition by an express act of parliament, constituting it a misdemeanor punishable with six months imprisonment, for any British subject to go abroad, to France in particular, without a passport, and without a proper licence.

If that were the nature of the charge, then, gentlemen, you would have to inquire farther, not simply whether they had intended to go abroad generally to parts beyond seas, but whether they had intended to go to that particular place, which was prohibited, namely, to France in particular; and whether they had, or not, a licence and authority to go there. If the prisoners were on trial for a misdemeanor under that act, and if the intent were made (which it is not) a crime, and could be made a subject of inquiry, upon that subject I should fairly state that a great deal of written and parol evidence has been laid before you pressing against four persons, to prove such a charge.—Do not misunderstand me, gentlemen; I do not mean to state that all the evidence of an intent and preparation to go abroad was not necessary on the part of the prosecution—it certainly did constitute a necessary part of the charge, a necessary part of the proof; but all that I am urging is this, that when the prosecutor has established that part of the case, he has advanced a very little way in proving *that upon which you are ultimately to pronounce your verdict, and upon which the lives of these five men are at stake*.

Gentlemen, you are to say, not what they actually did in this country, not what they intended to do in this country; all that they did in this country was to treat for a vessel; all that is imputed to them as having intended to do in this country, was endeavouring to procure a vessel, in order to leave it, and go into parts beyond seas. That, I have shown you, gentlemen, is not treason.—What is treason, then? and what is the point and the gist of accusation against us?—Not what was actually done here—nor what was intended to be done here—but a farther and ulterior accusation, and upon which you, gentlemen, are, if you pronounce a verdict of guilty against these men, to declare prophetically respecting an ulterior intent to do hereafter, in *another kingdom*, what they meant to do, if they had succeeded in getting abroad. This is the charge, gentlemen, and this the part of the case upon which I make my stand. I say, this part of the charge is not established by the proof that the law re-

quires, and upon which you can safely stand, in a case of life and death, to pronounce a verdict of guilty against any body. I say, gentlemen, when you examine it, you will find that all this part of the case rests altogether upon what my lord Coke calls conjecture, presumptions, and inferences, upon which you ought not to press in a case like the present; it is that species of proof upon which all the authorities have said it is dangerous to rest in a case of life, but more especially in a case like the present, where undoubtedly the law has always stood by the prisoner, not merely for his sake, but for the sake of the public, in a state prosecution, where individuals on the one side stand engaged in an unequal contest with all the weight and power of the crown opposed against them. On that account it is that the law stands by the prisoner, and requires that the prosecutor shall clearly make out his case, and shall not leave it upon naked presumptions and conjecture, upon which a jury cannot safely say they are clear in pronouncing upon the intent of others. In this view of the subject it will not be necessary for me on the part of the defendants, to wade through all the evidence that has been adduced, to go through every particular witness, or even to examine, more than in a very general way, all the parol and written evidence that has been adduced on the part of the prosecution.

You will recollect, gentlemen, that my learned friend, in his able and eloquent opening, went through minutely all the circumstances respecting an intended journey, and an intended voyage to leave the kingdom; all the witnesses that were called, every one of them went merely to prove all the minutiae of this plan; all that is now spread on the table before you, all the circumstances that have been produced, to what do they tend, but to prove all the particulars of the journey in detail: one went to this house, and one to the other, by sea, on horseback, or on foot; what hour they arrived at this place, and the other, and a number of witnesses are called to prove different prisoners at this house, and at the other house, on this day, and the other; all which are only the minute circumstances attending a proposed journey and a voyage abroad; and had this been a civil case, I certainly should, in the very outset of it, the instant the other side had begun with a detailed proof upon that subject, I should have relieved my learned friend by stating, that undoubtedly I did not mean to controvert that part of the case; that four of the prisoners did intend to go out of the kingdom; Mr. O'Connor and his servant Leary; another person, for whom I am counsel, Mr. O'Coigly; and Mr. Allen. I admit that fair evidence has been given, fit to be laid before a jury in proof that these persons were all clearly connected in an intent to go out of the kingdom, and to go together—Gentlemen, I will not address

to you a word upon the subject, to insist that, after the weight and body of testimony, parol and written, that has been adduced before you, you will not be warranted in that conclusion.

But, gentlemen, now that you see what is the nature of the charge upon which all the question arises, I beg to call your attention pointedly to the subject, and to ask you to answer—Has the prosecutor established, as he is bound to do, beyond any reasonable ground of doubt—has he established this proposition, that the paper, upon which alone is fastened all the imputation, was intended to be carried by any body, as the charge states, and delivered to the Executive Directory of France, for the purpose of procuring an invasion of England, or, as in one of the overt acts it is charged, this realm—there is no doubt that this realm means the realm of Great Britain—the charge against us, in no part of it, relates to the invasion of any other part of his majesty's dominions, but is altogether confined to the realm of Great Britain; and you are, if you pronounce the prisoners guilty, to adopt this first proposition, to say that it is clearly and satisfactorily made out, in proof, that this paper was intended to be carried to the Executive Directory of France, for the purpose stated, of procuring the invasion of Great Britain; that is the first part of the charge.

When that is proved, if it were proved, which it is not, the next point which the prosecutor is obliged to make out is, against whom that charge is established; and, gentlemen, if you were satisfied upon the first question, it would be necessary for you carefully to ascertain what evidence affects each individual prisoner, because each is responsible only for his own individual acts and intentions. You would then be to pronounce, under this second head, whether it were possible, in any view of it, to make any body responsible for the paper, even supposing its destination to be as stated, whether it is possible, upon the fair result of the evidence on which you are bound to decide, to press any responsibility respecting that paper beyond one individual, who is alone implicated in it, who alone purports to be implicated by the paper itself, upon whom alone it is pretended to have been found, and without any one circumstance to connect any other person now standing before you in charge, not with a general purpose of going abroad, that is not the point, not with an intent to go out of the kingdom, that is not the question, but to connect him with that individual paper, or to fasten and fix upon him, more than by general loose suspicions (much too loose to act upon even in common life, and infinitely too loose to act upon in a court of justice upon any subject, and least of all in a case of life) the ulterior intent of carrying that paper to the Executive Directory of France, for the purpose stated. But is an intent to carry this

paper in the way stated at all made out? I deny that it is, and I insist upon it the prosecutor has not made out that proposition.

Gentlemen, I do not mean to state that here again there may not be suspicions, conjectures and presumptions; but that is not enough, when you examine upon what ground these suspicions are entertained; that they are not of a sufficient nature to warrant your verdict upon this part of the case, and to fasten upon any body, even upon the individual who is principally concerned with respect to that paper, that there is not enough to warrant you in saying you can venture to pronounce, upon your oaths, that that paper was intended to be carried to the Executive Directory of France, for the purpose of procuring an invasion of Great Britain. Before I enter upon that subject, it is just necessary to clear the other part of the case, I mean that which respects a journey and a voyage, by stating, that undoubtedly you have the case of four persons, foreigners in a manner in this country, all the natives of a sister kingdom, who have been, from circumstances that it is not necessary more minutely to detail, under the necessity of becoming fugitives from their native country, except that one of them, Leary, is the mere domestic accompanying his master, having no concern or will of his own, but merely following the fortunes of his master, without being in any respect concerned in them. With respect to the other persons, Mr. O'Connor, Mr. O'Coigly, and Mr. Allen, that they had recently been under the necessity of leaving Ireland, and coming into this kingdom for a very short time, and soon were under the necessity of leaving this kingdom also.

Gentlemen, I will not attempt to conceal from you, that they were actually flying out of one country, and likewise out of another; that they were persons under charge, under suspicion, and under accusation. When I state this, I am not afraid that it should operate to their prejudice upon the present subject, that they were under charge or under suspicion of a nature not like the present; but you all know the political distractions in another country; you all know in what a state Ireland is, and how impossible it is for persons who have taken an imprudent part in the politics of that country, which has made it necessary for them to leave it, to avoid the consequences of those acts; or that even if they have taken any decided, though not imprudent part, yet that in the distracted state of that country, the circumstances in which such persons are placed, may render it impossible for them safely to remain there; I say it is easily accounted for why persons of all descriptions should be emigrants from it for a time, and should for the present exchange it, if they could, for any other country where they could safely and properly remain.

Gentlemen, I am free to state to you, that Mr. O'Connor was a gentleman of high rank

in that country, of an ancient and honourable family, a nephew, as you have heard, of lord Longueville—a gentleman who had had a seat in the Irish House of Commons, who had filled the situation of high sheriff for the county of Cork, and who had conducted himself, as a witness has stated, in a manner to merit the gratitude of his country in the execution of that high and responsible office. I am not here called upon to vindicate all the political opinions of Mr. O'Connor; he does not stand now in charge upon the propriety of them, nor is it a question now whether he was right or wrong in the opinions that he entertained respecting certain reforms, which he considered as necessary to be made in that country—whatever his opinions were, he had openly and plainly declared them in his place in the House of Commons; whether they were right or not, he certainly had promulgated them publicly in a manly and open way; whether, after he had done so, it was proper or right in him to mix in another concern, as one of the witnesses has stated he did, of a less honourable nature, to become concerned in a public newspaper, called the Press, and to make himself responsible for all the contents of that paper, and for all the libels that might at different times happen to be admitted into it; whether it was prudent or proper in him so to do, whether he has made himself responsible for all the consequences of that conduct, is not the subject of enquiry to day. Your acquittal of him upon the present charge, will not leave him the less responsible for any thing that can be brought in charge against him for any thing he has done amiss in another country, or even in this, upon any other charge that can fairly be brought home against him; but, gentlemen, you cannot be surprised that, under all these circumstances, Mr. O'Connor had thought it right himself, and had been advised by his friends, actually to leave the kingdom of Ireland about the beginning of January in the present year. In consequence of what had happened, he had found himself under the necessity of leaving that kingdom.—Why? Because you have already heard what was the unfortunate situation of Mr. O'Connor, that he was undoubtedly an obnoxious man, who had been, as stated by one of the witnesses, already apprehended, had been in custody for a period of six months, and had been released without trial, without charge against him, after all his papers had been seized in that kingdom, after they had been all in the possession of the Crown for a period of six months, after he had suffered close imprisonment for that time, and that during all that period nothing had been discovered against him that made him responsible to the laws of that country; you have heard that he had been liberated without trial.

Gentlemen, when Mr. O'Connor found that his situation was such in that country, that he was liable (the Habeas Corpus act being

suspended there) to be apprehended on suspicion, to be subjected again to close imprisonment, which had already greatly impaired his health, and a repetition of which would in all probability have been fatal to him—I say, when a gentleman had once suffered so much in that country, and was liable again to suffer, he could not be expected to continue there; and here I do not mean to argue whether it was right or not that he should thus suffer, whether the state of that country made it necessary, on the part of government, to adopt those measures; I am not standing up here to arraign the propriety of them; all that I state is, that such was the fact, such the situation of that country, that a person guilty of no crime (I am warranted in saying Mr. O'Connor had not committed any, for if he had, undoubtedly he would have been brought to trial for it) was liable notwithstanding to be arrested and sent to gaol, there to be kept a close prisoner for six months. You cannot wonder that a gentleman, under such circumstances, should think it necessary to quit such a country.

The apprehensions of Mr. O'Connor were heightened also by circumstances that greatly tended to aggravate the nature of his imprisonment, to excite his alarm, and to strengthen his fears for his present safety, and to make him dread a second imprisonment. I shall prove, that while he was actually in close custody in that country, a sort of conduct was observed towards him, to which, (as I trust, gentlemen, for the sake of humanity, and as I have no doubt might be proved) the persons holding the great and responsible situations in that country could not in any respect be accessory; but the fact is, that while he was in the Tower at Dublin, in no less than in three instances, one in particular under circumstances that greatly tended to excite alarm in his mind, Mr. O'Connor was fired at by a sentry with ball, in such a way, that he very narrowly escaped with his life. Gentlemen, under such circumstances, when such was the situation of the country, that a man was liable to be taken up and confined in close imprisonment, not merely at the peril of his health, by the ordinary effect of imprisonment, but to be subject to peril and danger while in that custody from actual force, in a case where his innocence was so clear, that he was ultimately liberated without a trial, it is not to be wondered at that a gentleman should endeavour to take the earliest opportunity of quitting it, and to avoid all possibility of being again placed in a similar predicament.

In the early part of the present year, Mr. O'Connor therefore came into this country; that he had no other purpose, whatever than the one I have stated, viz. to avoid danger in his own, you will, I think, be clearly satisfied from his conduct when he came here. He arrived from the beginning of January to the latter end of February, a period somewhat short of two months, during which time I defy

he prosecutor to prove (indeed I may boldly state the reverse, because no proof has been adduced to the contrary) that during all the interval whilst he was here, any part of the conduct of Mr. O'Connor was, in the smallest degree, reprehensible, or such as to excite the smallest suspicions of his being concerned in any thing improper, either in thought, or in deed. Gentlemen, the prosecutors have had opportunities enough of knowing where Mr. O'Connor lived, with whom he lived, how he conducted himself during all that time. They have got at all his papers; you observe he has not used the precaution of concealing or destroying them; they have preserved every scrap and bit of paper upon the common subjects of life, and some of a more private nature; all are found, some in his possession, some in the possession of others, and they are all here laid before you.

I ask you now, gentlemen, to say, whether you discover a single circumstance, from his arrival in England in the beginning of January, 1798, to his leaving London on Sunday the 25th of February, one scrap of paper, that justly fastens upon Mr. O'Connor not merely any guilt, but even suspicion of any improper, dishonourable, or even imprudent conduct; that tends to show, during that time, he took any part in the politics of England, or mixed with any clubs or societies which are supposed to exist in different parts of the kingdom. Is there the smallest proof of it? It is impossible for Mr. O'Connor to prove a negative farther than by the sort of evidence that has already been given to you, namely, that his most confidential friends, those who saw and knew most of him, never knew or believed that he was connected with any one political society of any kind soever in the whole course of his life; he has positively declared the contrary himself, and there is no proof on the part of the crown that he ever was. Unless, therefore, you presume that he was, without proof, contrary to his own declaration upon the subject, and contrary to the evidence of Mr. Bell who has said that, to his knowledge or belief, it was not so, you must say that during all that period of time Mr. O'Connor did not mix or connect himself with any political societies of any kind whatever, good or bad, whether calculated to obtain pure and simple reform, or designed for worse purposes, if any such societies exist in the kingdom.

But, gentlemen, how did he conduct himself during this time? with whom did he associate? who were the persons he was at that time conversant with? Here you will find a most weighty and important part of the case in favour of this gentleman; you will find that Mr. O'Connor who had come into this country in the ardent hope that he might have been permitted quietly to remain here, had undoubtedly, though he had no connexions with any part of the politics in England, dear and near connexions in this country: great and respectable characters in it had for

a long period of time been Mr. O'Connor's most intimate and closest friends—gentlemen with whom it is the pride and honour of Mr. O'Connor's life to avow his connexion; I trust they will be here by and by, and be ready to-day to avow, on their part, their close intimacy, warm and affectionate attachment to him—persons of shrewd and intelligent minds themselves, who will tell you, that they never once discovered in any part of Mr. O'Connor's life or conduct, any thing to forfeit his title to their warmest and most affectionate esteem, and their highest opinion.

Gentlemen, when I state who these persons are, you will find this part of the case to be very important, not merely in the general view of character, which ought always to have great weight in any case resting merely on suspicion and presumption, but, in this, to be peculiarly essential in showing how this gentleman conducted himself, with whom he lived, in order to negative the imputation of this foul design; and is farther of the last importance, when you come to apply this part of the evidence to the paper in question; for I shall put out of all doubt, that this evidence disconnects him with that foul paper, and intrinsically proves that Mr. O'Connor could not possibly have had any concern whatever, directly or indirectly, any knowledge or privy, respecting the contents of it.

When I come to examine its contents if any man breathing can stand up, and state he suspects even that Mr. O'Connor could have been base enough, wicked enough, foolish enough, to have had any knowledge or connexion or privy, of any sort whatever, with the contents of that paper, gentlemen, I might venture to state, that I would abandon all hope on the part of Mr. O'Connor. You cannot convict Mr. O'Connor because that would be in a case which, on the part of the prosecution, depends solely on presumption and probability, to determine against all probability, against all the workings of the human mind, against the whole history and experience of the world, against all the evidence that human nature affords.

I have stated, that during the period in question, Mr. O'Connor was in habits of the closest intimacy and friendship with the first gentlemen of this country; and I am sure with men of liberal minds, such as I have now the honour to address, it will not operate, in any respect to the prejudice of Mr. O'Connor, or lessen the just weight that is due to the testimony of those gentlemen whom I am about to name and to call, that they are, I do not dispute it, mostly of a particular political party and connexion in this country. We are not now discussing the question who is right or who is wrong; with respect to the political opinions which divide this country; it would be extremely improper to introduce any such discussion into this solemn proceeding. I hope that all parties mean the same, that the

ultimate object aimed at, in the conduct and opinions of each, is the happiness, safety, and welfare, of their country; that though they may differ respecting the means, that is all the difference between good, wise, and intelligent men of this country. Nay, the paper in question, if any credence or authority were due to it, unquestionably proves this to be the case; that all persons of any rank and condition, all persons of any eminent situation in life, are considered as hostile to the great external foe of the country; that they are all united in their horror, detestation, and determined resistance (if ever the occasion should call for their united efforts), to a man united to oppose the common enemy.

I am sure it will not operate upon your minds to lessen the weight that is due to the testimony of the gentleman we shall call, if, upon subjects of a political nature, supposing you to have ever made politics the subject of your thoughts, you should happen to differ in opinion with these gentlemen. I state, therefore, that Mr. O'Connor was the long, close, and intimate friend of all the gentlemen that have taken an active part in parliament in opposition to the present ministry. I shall call to you, as witnesses, Mr. Fox, Mr. Sheridan, and many other gentlemen of great character and respectability, to show solely their private intimacy and connexion with Mr. O'Connor, down to the very time that he left London in February last, receiving him at their houses, interchanging the most social visits, in the manner in which the closest friends communicate, and receive one another. Undoubtedly they thought alike upon public subjects, they thought alike upon many private subjects, and it was that, and that only, which united one with the other.

This, I say, gentlemen, operates negatively and positively; it negatives any other connexion incompatible with this, and it positively proves his attachment and connexion with all those persons who, you will by and by find, are the pointed objects of attack in the paper that is imputed to Mr. O'Connor. You will find throughout that paper, that the greatest part of it, all the strongest, and by much the most acrimonious part of it (if it was intended to be delivered, or to be shown to any body), is closely and directly pointed against the best friends, the dearest and closest connexions of Mr. O'Connor, who is supposed to have been the author or approver of it, and which you must pronounce him to be, if you determine that Mr. O'Connor is guilty of the charge in question. Gentlemen, I state that Mr. O'Connor was quietly demeaning himself, and to this hour probably would have been employed in the same manner, would have continued to have lived unmolested in this country, and certainly not taking any part in the affairs of it. He was, in truth, actually engaged in the politics of another country, where was his proper sphere of action. He had concerned

himself about the politics of this country merely from the circumstance of his private friendships here with the gentleman to whom I have alluded, and as a casual by-stander.

But, gentlemen, it may be said, that the prosecutor has proved, respecting Mr. O'Connor, an intent not to remain here, but to go out of the kingdom; why did he intend to go out of this kingdom? If I could not answer that question, and tell you why—if I were, on the part of Mr. O'Connor, to retain a sullen silence, and to say to the prosecutor, you are bound on your part, to prove, not merely what was the reason, but to prove that the specific reason alleged in this indictment was the reason why he was going abroad: I am not bound to disclose any reason. If it was left altogether in doubt what other intent he had, and you do not prove to the satisfaction of the jury, the intent that you have charged, namely, that he was going to invite an invasion of Great Britain, though I were to be totally silent on the part of Mr. O'Connor, the jury must acquit him. And, gentlemen, I beg you to recollect, and to retain that observation, because you will find it not an immaterial one, as applied to many of the topics pressed against this gentleman, in the out-set of this business, that the paper, and circumstances attending it, throws upon the gentlemen at the bar, a supposed necessity of explaining this or that circumstance, is not a true consideration of the case; it would be the greatest hardship in the world if it were so, as I shall particularly have occasion to observe, when I come to take notice of one or two papers produced upon this subject, and which alone are material for your consideration. Reverting now to the subject of this intended departure from the kingdom, I say, if, on the part of the prosecutor, the evidence be not sufficient to prove the intent charged, you must acquit Mr. O'Connor, without any positive evidence on his part, of what was his motive.

But, gentlemen, I am not disposed, on the part of Mr. O'Connor, nor am I instructed on his part, to conceal any thing from you; that is not the nature of Mr. O'Connor; if he has a fault, it is unquestionably the unguarded frankness, and unbounded liberality of his mind, characteristic of the country to which he belongs, and peculiarly so of himself, an open, unguarded manner of conduct, throughout all his public and private life. Gentlemen, Mr. O'Connor undoubtedly did intend to go out of this country—why did he? because he was advised by the best legal advice that the country affords, because he was informed that he could not with safety remain in the kingdom; that he was liable, if he did, to be apprehended, and sent back to Ireland, where he might be in danger of another custody, and the possibility of a trial in that country. Though originally he supposed himself to be in a state of security here, he was told the contrary by the best legal advice

upon the subject; and therefore, from the moment that he received it, unquestionably Mr. O'Connor did, what is proved by Mr. Bell, and what I do not dispute, incessantly endeavour to find means to go out of the kingdom.

But you may, perhaps, ask for satisfaction one step farther; does he not appear here to be going out of the kingdom privately and secretly? does he not adopt a change of name? How is this referable to a legal departure out of the kingdom, or consistent with what he had a right to do? Why does he not plainly avow it; apply for a passport, and publicly go, in the way that any other subject would, who, for any lawful reason, had occasion to quit the kingdom? Here again, I say, it would not be incumbent upon me to go into the specific reason. If the prosecutors do not fasten upon it the intent charged, even if it were to be left to general suspicion only, what was the reason and motive for Mr. O'Connor having recourse to these methods, all that you could fairly say would be this, that there was some reason why it was necessary for Mr. O'Connor to go privately out of the country, not in the regular channel, not with vouchers and documents that a person having a right to go would have had about him, at the time he actually went. But it does by no means follow, that he was going to commit treason, because he was going privately out of the kingdom; for if that argument could hold, no man could ever be guilty of that, which is a subject of charge in a particular act of parliament that has prohibited British subjects, without licence, going out of this kingdom into France, at the peril of committing a misdemeanour, and being liable to six months imprisonment. It might always be said, oh, they go out privately; there must be some illicit and improper cause, no man would go out in that manner who had not some wrong intent in it, and you must go the length of inferring, that every man that does so is therefore to be suspected of high treason; you are to jump to the conclusion, that every man who is going to France, without licence, is to be suspected of high treason. Proof that he intended to go secretly, is to be a sufficient foundation for a jury to establish, by their verdict, that he did intend to commit treason, in the foreign country to which he was destined. No, the law does not say that, the law does not reach to inferences and presumptions in this manner; other proof must be given than the bare circumstance of a private departure from the kingdom—of a concealment of purpose, name, object, and destination; such are only circumstances, and not alone fairly warranting a conclusion of a purpose of treason.

But, gentlemen, is it not easily explained why Mr. O'Connor should go out in this manner? If Mr. O'Connor was informed, that by staying here he was liable to be apprehended by the government of the country,

was it not indispensably necessary for him, when he was resolved to go out of the kingdom, to execute his plan with secrecy? and surely, if you see one plain and obvious motive for a man's conduct, you will not look for any other. In the prosecution of the plan prescribed to him, it was absolutely necessary for Mr. O'Connor that he should go without the knowledge of government. He could not therefore apply for a passport to the duke of Portland, because that would immediately have frustrated his object, and instantly have made him the prisoner of that government, to whom he disclosed his intention. It is quite ridiculous to assert that meaning to go out of the kingdom, and being advised that he must do so, for the purpose of avoiding arrest, and imprisonment, he could safely go openly to government, and declare, that he, Arthur O'Connor, wanted a passport to go out of the kingdom, to parts beyond the seas. Therefore, I say, it is very naturally accounted for why Mr. O'Connor should wish to go out of the kingdom, and go out under the circumstances that have appeared in evidence. But it may be said, why does not he go out alone, or accompanied only by Leary his servant, his common domestic, who had lived with him some time? Here he is going out with others, that is to say, with three other persons, as it is charged, Mr. Allen, Mr. O'Conry, and Mr. Binns; how happened they to go as part of his company?

Now, gentlemen, here again permit me to have recourse to the same argument that I have used before. If I were not able to explain to you by what accidental circumstance, or by what projected plan, those who intended to go with him, happened to be drawn into his company—indeed, with respect to one of them, I submit it to you, and it will be hereafter more fully pointed out to your attention, by his counsel, the intent to go personally abroad, seems fairly negatived by the evidence,—but with respect to the other two, if I were not able to explain why they were of his party, for the purpose of going abroad together privately, would it necessarily follow, that therefore they are all to be supposed to have had the same reason, to have had the same motive, to have had the same design for going? It would be incumbent on the prosecutor to prove that; he must prove the design of one individual of the party, and when he has proved that, he must connect the others with that design, not with the bare design of going abroad, but with the farther design of going, with the treasonable intent, which must be fastened on the single individual, before he can be convicted. It would be the rashest conclusion in the world, that because four persons either intend to go, or actually go together upon any journey, or voyage, in the kingdom, or out of the kingdom, the design of each is the design of all, and that each man is responsible for what the others intended.

Gentlemen, I shall by-and-by have occasion

to observe more particularly upon that subject, but I shall only state here, that you will recollect the *onus probandi* again lies upon the prosecutors, even if I gave no explanation on the part of those for whom I appear. But you have probably anticipated what is extremely obvious, and naturally accounts for these four persons going together,—they were all, as you observe, the natives of the same country, having all recently quitted it, had all been a very short time in this, three of them under the necessity of leaving this country for a similar reason that had driven them from Ireland. This naturally brings them all united in one object, that is to say, in the object of going out of this country, for that they all wished to go out of it I admit, so far they may fairly be considered as being united together, just as when any persons are united together, in going from place to place. And it might be equally predicated of all that go in a stage coach or a barge together, that they are united in one design, in going from one place to another, though each individual may have his own private reason for so doing. But is it extraordinary that these gentlemen should intend to go together? Is there any thing more natural, or more fairly accounted for, than the circumstances that are now given in evidence before you? I therefore, gentlemen, freely admit such to be the situation of things in the latter end of the month of February, when the evidence on the part of the prosecution commences.

Now, gentlemen, give me leave to request your utmost attention, to what specific evidence has been adduced on the part of the prosecution, to carry the case beyond this, and to fasten upon any body the intent charged, to go to the Executive Directory of France, and to carry the paper in question. And here, gentlemen, that I may act in the fairest manner, and broadly and in a manly way meet the charge in its fullest extent, I am not disposed to controvert this proposition, that if, on the part of the prosecutor, they can make out, that there was a clear design to carry that paper to the Executive Directory of France, for the purpose of producing an invasion of this kingdom, that it is most certainly unqualified high treason; and ought to make the individual who had such a design, responsible for it; farther I will admit too, that, if there was in the rest privity of the contents of that paper, the knowledge of the design to carry it to the Executive Directory of France, for the purpose stated, and that they so went together with the person carrying such a paper, and were actually, and can fairly be considered as joint carriers of that paper, for that purpose, I have no difficulty in admitting, that you ought, undoubtedly, as the law is, and ought to be, to make them all implicated, and involved in all the consequences of this indictment.

Gentlemen, do I not fairly, and plainly, and openly, meet the law upon the subject?

I stand upon the fact; because I am confident upon the fact. It is my bounden duty not, before such a tribunal, to argue questions that are clearly settled in point of law. I feel no danger in admitting that to be the law; I have no difficulty in saying, that with that admitted state of the law, as applied to the facts which have been proved here, you cannot safely pronounce, that this intent is satisfactorily and clearly made out, upon the evidence before you, against any one of the prisoners. Give me leave, gentlemen, before I enter upon the specific evidence upon this subject, to request that you particularly attend to the doctrine advanced by the highest and the gravest authorities, those who have had the greatest experience in criminal law, the wisest, the ablest, and the best men of their day, dictating to courts of justice, and to themselves, what ought to be the conduct of all tribunals, in matters of life and death; when they are engaged in an inquiry like the present, and are to form their judgment upon the kind of evidence, by which the present prosecution is supported.

You observe, gentlemen, you are called upon, on the part of the prosecutor, to say what is the intent of another.—The intent is not visible to the human eye; you are to discover it by circumstances that exist, you are to take upon yourselves to pronounce, respecting the hidden purpose of another man's mind, what was his intent with respect to all the acts which he is proved to have done. That is an inquiry, in all cases, attended with infinite difficulty, even in the common affairs of life, for one man to pronounce, from circumstances, and from conduct, what was the intent of any other man's mind, with respect to particular acts; but, undoubtedly, the degree of the strength of the case, will depend upon the nature of the acts, how far they do, or do not indicate, sufficiently clearly, the intent of acts that are unquestionably, and certainly proved to have been done.—How far they are, or are not, indicative of the intent charged.—Some acts are so plainly expressive of the intent, that juries are fairly warranted in drawing the inference—other acts are more equivocal, stand doubtful, and referrible to one cause or another, to one motive or another, the conclusion then becomes more difficult; when to acts of that sort you are to impute any particular intent, acts that are capable of being referred to a hundred different purposes and motives, then it becomes a matter of great caution, to be ware how far you take upon yourselves to fasten upon those acts, a specific intent; how easily may you be mistaken and deceived by circumstances, to suppose that to be the intent of another, which in truth was not.—I shall state the doctrine upon this subject from the highest authority, and I beg you to carry in mind, when you come to consider the evidence before you, what the greatest authorities in the law have said, with respect

to presumptive evidence, and how far it ought to operate in all matters of criminal inquiry.

Gentlemen, I would entreat you to attend to what, as affording a fair analogy, is said by my lord Hale, in speaking of the doctrine of presumptive evidence, how far it is safe, or even proper, in any criminal inquiries, to rely upon it, and what his own experience had taught him, was the danger, and the fallibility of even strong circumstances; such as would have been thought to warrant the conclusion, and yet have turned out to be totally fallacious, and to have led to very unfortunate consequences, to have subjected innocent men to death.—I will state to you what my lord Hale has, in his Pleas of the Crown, handed down to posterity, as rules for the guide and conduct of all courts of criminal judicature, upon subjects like the present.—“In some cases” (says he) “*presumptive* evidence goes far to prove a person guilty, though there be no express proof of the fact to be committed by him—but then it must be very *warily* pressed, for it is better five guilty persons should escape unpunished, than one innocent person should die.”—He then states a circumstance that had passed within his own knowledge, “If a horse be stolen from A, and the same day B be found upon him, it is a strong presumption that B stole him; yet I do remember, before a very learned and wary judge in such an instance B” (that is the person found upon the horse) “was found guilty, was condemned, and executed at Oxford assizes, and yet, within two assizes after, another person being apprehended for another robbery, and convicted, upon his judgment and execution, confessed he was the man that stole the horse, and being closely pursued, desired B” (that is the person found upon the horse) “a stranger, to walk his horse for him, while he turned aside upon a necessary occasion, and escaped, and B was apprehended with the horse, and died innocently.”

Now here, gentlemen, were strong circumstances, and, as lord Hale afterwards states, “persons really innocent may be entangled under such presumptions, that many times carry great probabilities of guilt.” There were very strong circumstances there to induce a reasonable ground of presumption; a man is found with a stolen horse, and, it may be said, is not this a reasonable ground, upon which the jury may fairly draw an inference, that he was the man who stole it. But, says my lord Hale, and he mentions this remarkable instance that had fallen within his own knowledge: “take care how you draw conclusions from circumstances, let it be *warily* pressed, because often it is fallible, and leads to erroneous and dangerous conclusions; therefore,” adds lord Hale, “I would never convict any person for stealing the goods of a person unknown, merely because he would not give an account how he came by them;” give me leave to request your attention to

that—“unless there were due proof made that a felony was committed of these goods,”—merely that a man is found with goods upon him, and will not give an account of them,—why that, says lord Hale, may induce a presumption, that a man stole them, and did not come honestly by them, for why (it may be said) will not an innocent man tell how he came by goods found in his possession; but, says lord Hale, “I never would convict without first requiring that there should be that *corpus delicti*, that there should be the fact established previously, of a felony being actually committed.” So he says, “I would never convict any person of murder, or manslaughter, unless the fact were proved to be done, or at least the body found dead, for the sake of two cases, one mentioned in my lord Coke’s Pleas of the Crown, cap. 104, page 239, a Warwickshire case.”

“Another happened in my remembrance in Staffordshire:”—lord Hale then states a remarkable case, that had happened within his own memory, proving the fallibility of presumptive evidence: “A person was long missing, and, upon strong presumptions, another was supposed to have murdered him, and to have consumed him to ashes, in an oven, that he should not be found; upon which, that person was indicted for murder, and convicted, and executed.” You observe here, upon strong presumptions—lord Hale states it—and within one year afterwards, the man, who was supposed to have been murdered, returned, being indeed sent beyond sea by the man who was accused of his murder, against his will; and so, says he, “though the man who was under accusation, justly deserved death, yet he was really not guilty of that offence for which he suffered.” Here there was unquestionably misconduct in the individual under accusation. He had done, to a certain degree, what he was highly criminal in having done. It warranted strong presumptions against him, yet says lord Hale in that case, by too rashly drawing the conclusion, an innocent man, innocent of the particular charge against him, was actually convicted and executed.

Lord Hale refers to another case, mentioned in lord Coke, illustrative of the same general doctrine, how *warily* a jury and a court, ought to act upon presumptive evidence: a very remarkable case that had happened in Warwickshire, which is familiar to every body: “an uncle who had the bringing up of his niece, to whom he was heir at law, correcting her for some offence, she was heard to say, ‘good uncle, do not kill me;’ after which time, the child could not be found, whereupon, the uncle was committed upon suspicion of murder, and admonished, by the justices of assize, to find out the child by the next assizes; against which time, he could not find her.” Here you will find that the person accused of the fact, had attempted, what justly created very strong pre-

sumptions against him—he had recourse to false testimony in support of his defence; “he brought another child, as like her in person and years, as he could find, and appraised her like the true child; but, on examination, she was found not to be the true child—upon these presumptions, he was found guilty, and executed—but the truth was, the child being beaten ran away and was received by a stranger, and afterwards, when she came of age to have her land, came and demanded it, and was directly proved to be the true child.”—This is a history that ought to make men cautious of drawing rash presumptions in criminal cases of life. Three instances are stated by lord Hale and lord Coke, and held out as a warning to all courts of justice, how warily they ought to press presumptive evidence in matter of life. Lord Hale concludes with observing, that persons really innocent may be entangled under such presumptions that many times carry great probabilities of guilt—that is his inference. I do not mean to state that these particular cases are any otherwise applicable to the present, than for the sake of the general doctrine laid down by lord Hale, which is in truth the doctrine of common sense, of common experience, and teaches how extremely fallible is reasoning drawn from presumptions, though strong in themselves, how often they lead to false and erroneous conclusions, and therefore how warily they ought to be adopted in any case, more especially in a case of life.

Now, gentlemen, do not let it be inferred I mean to state, that in no case is a court of justice to act upon presumptions, let the circumstances be ever so strong,—no, that is not the doctrine, but the doctrine is this, that presumptions ought to be warily pressed, that the jury ought to weigh them cautiously and guardedly, and to bear in their remembrance, that in their nature they are deceptive, that they may lead to erroneous conclusions, that innocent men may be entangled under strong presumptions of guilt, and that in doubtful cases, as lord Hale says, “*Tutus semper est errare in Acquietando quam in puniendo, ex parte misericordie quam ex parte justitie.*” It is safer to err on that side; that is the conclusion, not that you are universally forbid to act on circumstantial evidence; but that where it comes to be a measuring cast, you are to take the general presumption of innocence along with you, and not in a case of life, to infer the imputed guilt, unless the circumstances are so strong, so pointed, and so clear, that they cannot fairly be referrible to a contrary intent.

Having stated these general principles, let us examine the circumstances that have been laid before you, whether they are of a nature sufficient to warrant a verdict of guilty; how far it has been made out clearly and fairly as it ought to be to your satisfaction, that it was the intent of any body to carry the paper in question, the only paper which is pretended

to have been destined for that purpose, to the Executive Directory of France. You observe, the prosecutor is in possession of all the luggage of all the persons who were stopped; there is not a suggestion in any part of the case, on the part of the prosecution,—there is not a witness who has hinted at the idea, that at any period of the journey, or at any one place, there was any paper or bit of paper concealed or destroyed by any one of them; you are not to presume this, unless there be some evidence; there is indeed clear evidence to the contrary; because, if the prisoners had been disposed to destroy their papers, if they had used such a sort of precaution, unquestionably the prosecutors would not have been in possession of all the evidence they have produced, of all the most private and particular papers belonging to each prisoner; but papers of that nature are actually found, which excludes the idea that any had ever been destroyed; you are therefore warranted in believing that you have before you all the papers that these persons had in their possession of any kind whatever.

Now in the result of all the examination you have heard, and you seeing nothing has been left undone, and properly so, nothing has been left behind that the industry and weight of the crown could produce, from all quarters of the different kingdoms, there is no paper of any kind whatever, destined to convey intelligence to the Executive Directory of France, except one: It is a most extraordinary circumstance, if it was the design of any body of men in this country, if any such body of men exists, calling themselves, as they are stated here, the Secret Committee of England, if it was their design to send intelligence to France, for the purpose of inviting an invasion of this kingdom; it seems to me to be a most extraordinary case, certainly it is the first that ever existed in history, where so much industry should be employed, so much labour and expense undertaken as to hire four messengers to carry one paper; one paper only is found, and that is unquestionably the only one that existed. But, gentlemen, besides let us observe, under what circumstances is this paper found, and what there is to prove, on the part of the prosecution, that it was a serious paper of the kind stated, upon which you are to venture to take away the lives of five persons.

In the first place there is not the least tittle of proof on the part of the prosecution, there is not the least suggestion that there does, in point of fact, exist any such body of men as this paper professes to come from; for any thing that is proved before you, it may be the production of some idle garrulous, the random workings of some madman, some absurd, frantic, foolish person, who was writing a paper of this absurd nature, without having any serious meaning, without having any kind of authority, connexion or conse-

pondence of any sort whatever with the persons to whom it is addressed. You will perhaps, suppose that improbable; I state it as mere conjecture on our part; but I state without hesitation, that there being no evidence to prove that there doth, in fact, exist any secret committee of England, you are not to presume it. On the part of the crown they have, of course, been using all means to find out, and they have; it may reasonably be supposed, the means of discovering if there does exist such secret committee any where; no evidence has been adduced to prove that it does exist, and therefore I have a right to say that it stands on mere presumption, except as it is proved by the paper itself. But whether the paper actually was written by one individual, unconnected with any body, whether written for the purpose of mischief, or for any other wild, absurd, or extravagant purpose, I say, rests altogether without any proof on the part of the prosecution; if, therefore, there be none on mine, we stand in this respect on an equal footing. But it does not stand indifferent upon this subject, for the paper itself, and the circumstances under which it was found, furnish fair negative evidence, that it did not and could not come from any body of men whatever, conducting themselves with ordinary caution and prudence in the prosecution of the supposed plan, or even with common sense, and the same argument applies to those who had the charge of it.

If it was a paper of the description charged, sent by a body of men, constituting the secret committee of England, to the Executive Directory of France, this will be admitted to me, that no man could be the carrier of it without knowing the personal danger to himself, he must have known, that in case of his apprehension and this paper found upon him, he would certainly forfeit his life. Will you believe then, the bearer of it, if he had known it to be a paper of that description, would not have adopted ordinary caution for his own personal safety, much more if many lives were known to be at stake; surely, I say, that ordinary caution and ordinary care at least would have been used on two accounts; first, because if it was a paper of sufficient consequence to have a messenger employed in the transmission of it, it was necessary for the safety of the paper, and for the object of the mission constituting the sole purpose of it, that it should be protected with peculiar care; next it was necessary that care and caution should be used for the sake of the individual or individuals who were entrusted with the conveyance of it. Now, does there appear in any part of this business, from the evidence given by the crown, ordinary caution to have been used with a view to either of these objects?—Was there ever a messenger employed in a purpose like this (and especially one, who as is supposed by the contents of the paper, to have been a person

practised in such an employment, to have once before been the bearer of a similar paper, and therefore knowing the ordinary caution necessary to be taken with regard to it), who was guilty of such rash, imprudent, mad, and foolish conduct, as upon the hypothesis of the prosecutor, all the individuals standing here accused before you, did conduct themselves with in respect to this paper?

You find, from the evidence adduced on the part of the prosecution, that after they had arrived at Whitstable, on Monday the 26th of February, even the first day after their arrival, a circumstance happened, that would have put them upon their guard, that pointed out to them, even if before-hand the nature of their errand and their mission did not dictate particular caution, they were roused to it if they were insensible before by a circumstance that happened in the first commencement of this desperate undertaking, pregnant with danger every step they took. They were endeavouring, you observe, to go with circumstances of concealment with respect to themselves, and the object of their voyage, but not with respect to this paper.

With respect to the voyage, by which they mean to go secretly out of the kingdom, they adopt all the ordinary means of caution: would you not therefore expect from the same men, ordinary caution to be observed with respect to an object of greater moment? First, I say, generally upon such an occasion, men of all descriptions would be cautious; but next, when I see these men cautious upon all other subjects, and those of less moment, of a less pressing nature, in every point of view, I am led to expect from them, upon the hypothesis of their being bearers of a treasonable paper, at least similar caution with respect to that important paper; but if they were not sensible of the necessity of such vigilance before, surely the dullest mind, a mind that never had been employed in a business of this kind before, would have been roused to peculiar caution by the circumstance that happened on Monday morning at Whitstable. Is it not proved that on that morning a circumstance happened that intimated fairly to them all, that they were suspected persons; that they were known to be there; that the eyes of the public officers were upon them; that they were watched; that they were liable, every step they took, to be apprehended and searched? nay, it appears that at Whitstable, they actually were searched. You recollect it is proved, that Mr. King, the revenue officer, and the other persons who came with the luggage from on board the hoy, insisted upon examining the contents of the luggage at Whitstable, and that after they were gone, or rather at the time, the landlord apprised some of the prisoners of their future danger, and told them that they might expect to be searched at Margate. Knowing then that they were become the objects of suspicion, and noticed by the public officers of govern-

ment, in consequence of the circumstances that had happened, they were called upon, from thenceforth at least, if they had not been up to that time, to be more particularly cautious during the remainder of the journey.—How then can you possibly conceive that these men could be conscious, that there was in the pocket of one of them a paper of this description, and that no means should be employed to put it out of the reach of being taken in the event of their being apprehended and again searched; would not some of the best means have been adopted for this purpose, such as easily suggest themselves to persons who are in the habit of being bearers of papers of this dangerous nature, to put it beyond the possibility of detection?

A thousand means might easily have been adopted to make it impossible, in case of a second search, to have fastened upon them a single circumstance relative to this paper; it was extremely easy for an individual to have put it into a cypher known to himself, which he might have translated afterwards when he arrived in France, in a way that had he been apprehended, and the cypher destroyed, it would not have been possible for any individual to have known what was the nature of the paper actually conveyed; but here is a paper not in cypher, not in any disguised epithets and language, but in plain direct terms, treason in every line of it; if it were a genuine paper, being what it purports to be, from a body of men here, addressed to the Executive Directory of France, which every man who sees it, instantly observes is plain, palpable, direct treason, and points out those to be traitors who have it. What now is the conduct of those who are said to have the care of it?—Where do they put it for the purpose of secure custody, care and concealment? In a great coat pocket: why gentlemen is it possible to conceive that any one place could have been thought of more liable to danger than that was; the clothes, the most conspicuous when worn, yet liable at any time to be separated from the person, and in the event of danger not at hand to have its contents destroyed. What were these four bearers of a treasonable paper, upon the face of it undisguised treason, apprized of danger, expecting, and apprehending search, at Margate, and has not any one of them common sense or common caution, to adopt better means of concealment, or find a place to put it in better than the great coat pocket of one of the individuals concerned?

Gentlemen, I state this to be a very strong circumstance to show, that in the judgment of the person to whom it was known to be there, it must have been considered as an idle paper, of no consequence or validity, and not of the important nature that it is now represented to be, and therefore mixed with common papers, in a place of the least custody, or safety; but if this great coat did contain a paper, of this value and importance, surely,

some particular caution would have been observed with respect to the care of that great coat, when the party were at Margate, where they expected to be searched, where they knew they were watched; surely, they would at least, if the paper was to be left in a great coat pocket, have put that great coat where it would not at once strike the eye of the first man that came into the house. Now let us see what is the account given of it.

Why, gentlemen, Mr. Fugion, and Mr. Revett, two Bow-street officers, upon whose testimony you are entirely to depend as to the proof that any such paper as this, was actually found in that great coat pocket, relate that upon their coming into the room, a common room in a public inn (I do not speak of its being common, in the sense of being accessible to more than one party, but I mean in this sense common, that any other party, of any description of persons, might have occupied it, when not engaged by the individuals, that had been there over night); a room where the company had supped the preceding evening, and where they were to breakfast in the morning, they find hanging upon a chair, a great coat, with this important paper in the pocket of it.

Why, gentlemen, during the whole night, was that room locked? was it secured? were any means taken to prevent any mere spectator, the waiter, even if he had not been so attentive as to hear the scratching of a pen through a lattice in the next room, but a man who has the ordinary curiosity of a waiter, from examining the great coat, and inspecting the paper. In a public-inn at Margate, a seaport town, accessible to all descriptions of persons, constantly coming in and out, at all hours of the day and night, if any party, after these gentlemen had left the room, and were gone to bed, or any individual seeing a loose great coat, had from motives, either of curiosity, or from a wish to pick the pockets of it, examined what it contained, he might instantly have got the possession of this paper, which, according to the charge in this case, might subject to death, four persons who were sleeping in the adjoining rooms.

Surely it is impossible to reconcile this with the ordinary caution of men concerned in any purpose, and much less in a purpose of this nature; surely, they would at least have done that, which natural caution would have dictated; when they went into their bed-room at night, they would have carried the great-coat with them or some of them, for concealment or better care, and to keep it from any casual observer; and therefore, the leaving it in that exposed situation, adds extremely to the improbability of a consciousness in any body, that there was any thing of weight, or importance, in the paper itself, that should dictate caution with respect to it.—First, because of its being merely put in a great coat pocket; next, left loose in a common room, and exposed, to be found in the manner the witnesses have described it.

But, gentlemen, the contents of the paper, seem to me to negative all reasonable ground, to suppose that it could have been written in the way alleged, and addressed by any body here, to any well-informed and intelligent people in France, for the purpose suggested. It is supposed, that a secret committee formed in England, was meditating the horrid and wicked purpose, of inviting a ferocious enemy to invade this country; that they hired a messenger to carry intelligence to the enemy.—Why, gentlemen, surely it will not be said, that, if such a body exists, they do not know what all the world besides does, the character and description of the persons to whom they are writing; that, at least, those men, abandoned and profligate as they are, upon many subjects, have sense, and understanding, and experience in state matters—as their successes against almost all Europe must evince; and that, therefore, any person being wicked enough to address them, would, at least do it in a way that was likely to gain attention, in a way likely to be of some use to that Directory. Men do not engage in treason for nothing, they do not hire a messenger to carry merely high-sounding epithets, pompous sentences, and bombast phraseology of language; or to convey rash and general inferences and conclusions; without any detail of facts, without any minute intelligence that could be of importance to an enemy. No man concerned in a plot, to invite an enemy to invade a country, could be foolish enough to send intelligence not worth having.

But at the particular period, when this paper is supposed to have been sent, to be put into the hands of the Executive Directory of France, was the invasion of England a new idea? Did the enemy never think of it till it was put into their heads, by the Secret Committee of England, in the month of February, 1798? Are these persons to send a messenger over to France, to point out the invasion of England, as a happy thought, a new plan? Is it not matter of public notoriety, that the Executive Directory had threatened the invasion of England, whether with an intent to prosecute it, or only as a measure *in terrorem* or for any other purpose, for a length of time before; nay, they are even in this paper, applauded for their public proclamations, issued for months together; announcing to the whole world, that they had had that subject under their anxious consideration; therefore, it could answer no purpose, to agend any paper by way of suggestion or hint on this subject. But, it may be said, it was not to suggest the idea, but to encourage France to carry it into effect; to put them on the back, and induce them to prosecute their intended purpose. Well, then, if that was the wish, surely they should address to that Directory, topics likely to induce them to adopt the measure recommended, or at least, to persevere in it. Is there one word in this paper, from the beginning to the end of it

and I beg you to read it by-and-by, for that purpose), adapted to this object? Does it contain one syllable of intelligence, that the Executive Directory of France must not have been actually in possession of (able as they are to reason upon the case), is there any specific intelligence of facts, which the Executive Directory of France might not derive a knowledge of, by the means they are known to possess, of getting at all that passes publicly in this kingdom? I mean public measures, actually going on in this kingdom. We all know it has been openly said, by one of the ministers of the country, and therefore it can be no secret, that there are, in this country, among foreigners that reside here, as many spies of the Executive Directory of France, as France chooses to pay. But, upon some subjects they do not want spies. With respect to the state of the finances of this country; the exact state in figures, with respect to all the public ways and means of the kingdom, they want no spies, nor any messenger from a secret committee: they have knowledge upon that subject, more precise and accurate than any ordinary person can give them; and certainly much more than this paper conveys: therefore, when this paper states, by way of intelligence to the Executive Directory of France, that the system of borrowing is at an end, that the government has tried to raise a kind of forced loan, which has failed; that every tax diminishes that revenue it was intended to augment, and that the voluntary contributions produce almost nothing; I say that such could not be any specific intelligence to the Executive Directory of France, which they had not already obtained without it. They knew, from other sources, how far the system of borrowing was at an end, how far a forced loan had been tried, and how far contributions had succeeded or not. The paper is merely a comment upon facts, not a detailed statement of any thing specific, which such committee of England might know, and which the enemy did not.

With respect to the state of the kingdom, it is the subject you all know of a speech published in the papers, setting forth in detail all the means and ways of the kingdom, all its resources, all the means by which a revenue is to be collected, and the application of it. All such intelligence could be got therefore from the public newspapers; and you will not suppose, that the Executive Directory of France, would have thanked any body for high-sounding comments or conclusions, without the disclosure of any one fact, which they did not know before. If this paper had been intended to be addressed to the vulgar, to hold out general ideas to the mob, to captivate or delude the ordinary class of people; then it might be said, this generality will pass. There are well rounded sentences, calculated to tickle the ears of persons who do not investigate correctly, and who may be induced to act upon such materials. But that is not the case with any secret committee, sending in-

telligence to the Executive Directory, fit for their inspection, and proper for them to act upon: they could only hope to make the transmissable valuable, to make it an object of attention, by the communication of facts not known to the Directory before; by putting them in possession of facts material for them to know, and which, when sifted and investigated, afford solid and reasonable grounds for them to act upon.—The paper then states with respect to the contributions, that they have failed; that the poor workmen have been forced to contribute, under the threat of being turned out of employ; that the army have been called upon to give a portion of their pay to carry on the war, by far the greatest part have peremptorily refused to contribute to so base a purpose; and the few that have complied, have in general been cajoled or reluctantly compelled to it. Now I remark here, that the state of the contributions of the kingdom, how much had been actually collected, what persons had subscribed, in what part of the kingdom, by what class of men, workmen, manufacturers, army, navy, rich and poor, and all descriptions of men, with the exact sums they had actually subscribed, in every part of the kingdom, was matter of as much public notoriety as the public papers could make it in town and country: upon this subject of the contributions, therefore, the Executive Directory must have been possessed of the most accurate intelligence.

My learned friend stated as to this paper, that the falsity of it aggravates its malignancy. I insist the palpable falsity of it, addressed to those who must know the falsity, is decisive evidence, that it was not intended for their inspection. Would not the Directory have felt themselves insulted instead of informed, discouraged instead of encouraged, if all the intelligence that could be sent to induce the invasion of the kingdom; was such as they knew to be bottomed in falsehood? In that way, the argument seems to me to press.

The Executive Directory must have known that all ranks and descriptions of men had freely and voluntarily contributed in aid of the war; and the declaration made in this paper, by the supposed secret committee of England, that the people of England had not subscribed, or that their motives were so and so, could not have obtained credit for a moment. The fact spoke the contrary; the French must have known that there were near two millions actually subscribed, and recollecting that their own ragged subscriptions amounted to but a few hundreds, would they have considered this as proof that the people of England were ready to receive a foreign force? They must have said, "why do you thus insult us: this may do for the vulgar eye, but we know the fact of the actual amounts of the contributions, all the persons and all the circumstances connected with it: it is matter of public notoriety. You come here pretending to deceive us by stating what

"is notoriously and obviously, to the whole world, false. You come attempting to impose upon our credulity. You suppose that we are such dupes, as having our eyes upon England for months, intending to invade it, that we do not yet know what is the state of the commerce of England, what is the state of the contributions, a fact known to every peasant in France. Do you expect to impose upon us with this absurd paper to aid and direct our decision on the important measure, whether we shall or shall not invade the kingdom of Great Britain?" Nor is this all, gentlemen, I insist, the paper is upon the face of it so absurd and ridiculous, that it could not impose upon the credulity of any man living who reads it throughout, for every sentence shows the absurdity and folly of it.

Mark the absurdity of the ensuing passage, addressed to men of common sense who are to read it, "The army and the navy, the greatest part have peremptorily refused to contribute to so base a purpose, and the few that have complied, have in general been cajoled or reluctantly compelled to it." What with a majority against it, compel the army to it! Who compels them? Who can compel them to a measure to which they are not forced by law, to a measure of pure volition? How absurd, to represent to the Executive Directory of France, that although all the army and navy, all the strength and force of the kingdom, are against the subscription, notwithstanding they are not compelled by law to it, the few that have complied, have, in general, been cajoled or reluctantly compelled to it!—Gentlemen, that is so impossible that it carries upon the face of it a plain, palpable contradiction, and if addressed to men of common sense it must instantly have negatived the assertion it contains. It could not be otherwise: it speaks for itself. In a plan of voluntary contribution some might concur as a test of their patriotism and attachment; but it could not be matter of force; nor could it be believed to be so, by those who must have known how many large bodies of the army and navy had contributed.—A mere general assertion like this from any body, and still more from such a body as this, stating such general, false, and absurd intelligence as this, could only have defeated itself, and have prevented any credit being paid to the paper or the bearers of it.

But, gentlemen, in what follows, there is still stronger evidence, that this paper could not possibly be intended, as is suggested, for the use of the Executive Directory of France. It is supposed that it was sent for the purpose of inviting the Executive Directory of France to invade the kingdom; and to have been intended to furnish reasons why they ought to invade it. I have already observed, in part, on what is stated by way of inducement, to the Executive Directory of France; and how impossible it was for it, in the least, to

operate upon the minds of any plain sensible men, examining this paper, and acting with ordinary prudence upon the subject of it.—But, let us farther see, what is the encouragement held out by this paper to the Executive Directory of France to invade this kingdom; in some part of it, it is endeavoured to be represented that the people of England are waiting with anxiety to receive the army of France upon the coast of England, to co-operate with them.—Now other parts of the paper contain contradictions of that inducement, so plain and obvious, that it could not but operate upon any intelligent mind, in a way to produce the directly opposite impression. And supposing, for a moment, that this paper had actually been addressed and carried to the Executive Directory, they would have said this is plainly a paper sent by your government to us to deceive us; it cannot be sent by any sincere and real friends of ours.—It must have appeared to be a mere trick practised upon the Executive Directory, to induce them to make an attempt which could not succeed, so ill concealed that it detects itself.—For what does it tell the Executive Directory of France, upon subjects on which they had as ample means of information as the writer of the paper, namely, respecting the state of parties in this kingdom?—It plainly implies, in the first place, that the writer of this paper, and whoever is concerned in it, constitute a distinct party, separated and detached from all those generally distinguished as the principal parties in the kingdom. I shall hereafter have occasion to show how material this is for your consideration in every point of view. You will observe, it is quite clear, that the paper is written by some persons, if written for any public purpose at all, hostile to all the leading interests in the kingdom, to all persons of any rank, all of any worth in the kingdom, all who have taken any part in public measures: and that it is more particularly pointed against those persons who have taken the most active part in the opposition, as it is called, in parliament. It plainly and unequivocally points out to France—you are to understand that we, the writers of this paper, are a distinct body, and totally despair of having any one leader of rank or consequence in the kingdom; we despair of receiving any support from those who have taken the most active part in the public affairs of the kingdom; for, with respect to them, we fairly and broadly tell you they are all, to a man, persons who have mixed in the ranks of the people,—there they will remain; that not one of them is worthy of the smallest degree of credit or confidence from us, who write this; not one of them, from henceforward, to be considered as otherwise than hostile to us, and consequently hostile to the purpose of this paper.—See whether that is not the fair report made in this paper; whether the expressions, and whether the principal object of it, if there

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were any object in it, be not manifestly calculated to do away any hope that the enemy might have of internal dissensions between the principal men of the kingdom; to destroy any hope they might entertain of countenance or support, of any sort whatever, from any person of rank or fortune in the kingdom. The party, usually acting in support of government, France could have no hope or expectation of being in any respect favourable to them; nor would I be understood to imagine that any body could be foolish enough to suppose, even without the testimonial of this paper, that the other great and respectable characters, to whom I have alluded, could ever be guilty of a design to countenance or encourage the hostile invasion of this kingdom; but I say, that if the Executive Directory, or any persons in France, could have entertained a delusive hope upon that subject, that there existed any one man, among the members of the Opposition, favourable to this traitorous purpose; this paper was expressly calculated to negative such a supposition, and to remove any such hope; and therefore to destroy one of the grounds upon which France could be induced to invade this kingdom.

Gentlemen, attend to this passage: “Parliamentary declaimers have been the bane of our freedom; national plunder was the object of every faction, and it was the interest of each” (without any distinction, observe) “to keep the people in the dark; but the delusion is past. The government has pulled off its disguise,” (mind what follows) “and the very men, who under the semblance of moderate reform, only wished to climb into power” (clearly persons, therefore, who were not now in power, and persons who had been the favourers of moderate reform) “only wished to climb into power, are now glad to fall into the ranks of the people! Yes, they have fallen into the ranks, and there they must for ever remain! For Englishmen can never place confidence in them.” There is open war declared between the writers of this paper, and whoever was concerned in it, against all persons of the description alluded to. It goes on to declare, still more pointedly and strongly, their disapprobation of them, contrasted with those with whom they (the writers of this paper) have connected themselves, and from whom they have hope of assistance. “Already have the English fraternized with the Irish and Scots, and a delegate from each now sits with us.” It then expressly states, with respect to England, “Fortunately we have no leader; avarice and cowardice have pervaded the rich, but we are not therefore the less united”—written by the poor, I take for granted, persons who were not themselves of the description stigmatized—“Avarice and cowardice have pervaded the rich, but we are not therefore the less united”—we consequently are not of that description.

Then it goes on more decidedly to mark out the members of the Opposition—“Some

few of the opulent have indeed, by speeches, professed themselves the friends of democracy;—Now, who can they be? In their interpretation, unquestionably, that must be descriptive of those who have made the strongest public declarations upon any subject, which the writer of this paper considered as favourable to the friends of democracy; even with respect to those who have taken the strongest part in their favour, they mean to declare that they have not the least hopes of any support from them: for they go on to state—"but they have not acted, they have considered themselves as distinct from the people, and the people will, in its turn, consider their claims to its favour as unjust and frivolous; they wish, perhaps, to place us in the front of the battle, that, unsupported by the wealth they enjoy, we may perish, when they may hope to rise upon our ruin."—Mark, throughout, it is clear, that if the paper comes from any body of men, it is from persons in the lowest ranks and descriptions of life; "they wish, perhaps, to place us in the front of the battle, that, unsupported by the wealth they enjoy, we may perish, when they may hope to rise upon our ruin." Gentlemen, attend to this, "But let them be told, though we may fall through their criminal neglect, they can never hope to rule, and that Englishmen, once free, will not submit to a few political impostors." Here you observe plainly, there is a direct attack upon all those persons, who had taken the most decided and open part, upon any occasion, any where, either in parliament or out of parliament, who had any where publicly avowed sentiments most favourable to the friends of democracy: all are indiscriminately given up; not one leader is to be found amongst them; not one man among them is deserving of confidence, they are all swept away in one undistinguished mass. They are all *political impostors*; persons unworthy of credit, and who are plainly held out by this paper, in the event of a revolution taking place, as deserving to be buried in the general wreck and ruin. Not, indeed, to be left to the general fate of others, who have uniformly and openly declared their sentiments throughout adverse to democracy, but they are to be particularly noticed as *impostors*, men who had deluded the people, and who, therefore, in the event of any invasion of the kingdom, would be particularly marked out to the vengeance both of the enemy and of their country—and particularly of all the persons, if there was any plurality of persons, concerned in penning this idle, foolish, and malicious paper.

These will, I trust, appear weighty arguments, to show that the contents of this paper, as applied to an invasion, would, if it had been delivered to the Directory, have led France to despair instead of hope. It told them plainly that all ranks of people in this country, all the men of consequence, wealth, opulence, and power in it, all who had taken

any part in the politics of it, were hostile to them and hostile to the supposed purpose of this paper.—Is this encouragement to an enemy to invade the country? How would any enlightened mind reason upon this? What would any persons, in France, who had long been looking at this country, and who had long known it intimately and accurately, conclude, on being told, that all the men of rank, all the men of property, parties of all descriptions are united; that it is only amongst the lowest dregs of the community there can be any possible hope of support? Could that be considered as encouragement to an enemy? Does it not decidedly intimate to them, give up your weak and abandoned project; it is all over, you can never hope for support here; men of property and rank of all parties are equally adverse and hostile to the measure of an invasion? Is this calculated to encourage, or directly the reverse? I say, that if this paper had been delivered to the Executive Directory of France, they must have reasoned thus upon it: you pretend to hold out to us, in general terms, that you are friendly to an invasion; you state conclusions of fact, about the contributions, which we know to be false, and you state as a motive to encourage us to invade the country, that all parties who have any property are against us. A hope, that they might have some leader, who was friendly to an invasion, might have afforded some encouragement, but even this is negatived.—Is it possible that more discouraging intelligence could be sent? Must not the Directory have instantly known, that in this great country, where property is, comparatively speaking, so equally distributed amongst all ranks of men, that they would have, if they attempted to execute their wild project of an invasion, to contend, not with one particular class of men, but with the united power that results from the influence, the dependance and the attachment which property thus diffused, creates in this country?—Must they not have known, that the instant England is united in itself, the instant that all parties and descriptions are united in determined hostility to the enemy, not only they, but all the world have known, that England, thus united, may bid defiance to the world?—That it is in vain for an enemy to hope that when there is a union like this, proclaimed and declared by those who could have no interest in declaring it, if any such persons exist as this paper supposes in this country, France must consider invasion as a forlorn hope: they are only to expect support from persons who possess no power, wealth or consequence, and to be opposed by the men of property of all ranks and descriptions throughout the kingdom.

Gentlemen, I must entreat you not to misunderstand the way in which I point this. I do not mean that the observations made upon this paper, shewing the folly of it, the contradictions it contains, the absurdity of its

contents, are alone an answer to the charge. If it was, by other circumstances decisively proved to be destined to meet the eye of the Executive Directory of France, and actually to be delivered to them;—whatever may be the contents or effect of it, whether it would essentially tend to encourage or to discourage the invasion;—yet, if it was intended to be shown to the Executive Directory of France, in order for them to exercise their judgment upon it, although they would have drawn the conclusions I have pointed out, I do not mean to argue that it would not be treason to carry it to them for this purpose.—My argument is, that there being no positive evidence to prove that this paper was destined for the eye of the Directory, no positive evidence that there was any previous plot, any conspiracy, any body of men assembled for the purpose of communicating with, or sending intelligence to France; there being no evidence to prove that even an ordinary degree of caution was used with respect to the paper, but every attendant circumstance showing the negative;—under such circumstances, the contents of the paper ought to have great weight in disproving the charge of its alleged destination. All the circumstances taken together, the contents of the paper, the place where it was found, the circumstances attending the care of it, the absence of positive proof on the part of the prosecution, all speak together that it must have been an idle paper, not of the nature, nor intended for the purposes charged in this indictment. If this should be your belief, there is an end of the indictment for that is the point upon which the whole rests.

I have assumed, in what I have been now arguing, that the paper was actually found in the pocket of the great coat, and that that great coat did actually belong to Mr. O'Coigly. If I had been in any respect disposed to put this case upon little circumstances, I might have gone into some observations respecting the testimony that has been given upon that subject—I might have observed upon the manner in which the persons conducted themselves with respect to the finding this paper, and the inconsistency in the testimony given on the part of the Crown. Two witnesses from Bow-street have spoken of the finding it, and the place where they first took it out of the pocket, which was expressly stated by one; of them, it not by both, not to be in the presence of the prisoner; but that it was actually, for the first time, taken out of the great-coat pocket in a room wherein the only persons present were the two Bow-street officers and Mr. Twopeny the attorney. Mr. Twopeny, the attorney, was called, and swore the direct contrary. He has positively sworn, that though he came after the prisoners were arrested, yet he came into the room where the great coat was, and he actually saw the pocket-book taken out of the great-coat pocket in the presence of the prisoners. Upon this subject, therefore, there

certainly is a direct contradiction between Twopeny and the other witnesses examined on the part of the Crown——

[*Mr. Plumer was informed by the Court that he had mistaken the evidence—that their testimony was uniform upon that circumstance.*]

Mr. Plumer.—I am thankful for the correction—I was not going to lay any kind of stress upon it, but only made the observation with a view to a principle, the truth of which is equally proved by another circumstance which occurred in the course of the evidence on another subject. You recollect, gentlemen, that a woman was examined for the purpose of identifying one of the gentlemen at the bar; she gave her evidence positively and distinctly at first; on being asked which was the person that came to Canterbury on Sunday night, she pointed out Mr. O'Connor positively to be the person. Afterwards she was desired to come up nearer to him, and again pointed him out, and swore positively to the fact; but Mr. Garrow having mentioned the name of the person so pointed out to be Mr. O'Connor, and the witness by that means finding that she must have made a mistake, instantly corrected her evidence, and fixed upon the gentleman standing next to him; and it is notorious and admitted, that Mr. Binns, and not Mr. O'Connor, was the person. The evidence of this witness is I know, struck out, and will not be summed up to you; but I make the observation for the purpose of showing with what caution you ought to receive little circumstances, that are collected together for the purpose of raising a presumption, and an inference of guilt.

Another circumstance has been given upon evidence, which I presume, is meant to be relied upon, and which likewise shows how extremely cautious you ought to be in relying upon evidence, such as has been brought to-day, collecting together little circumstances of probability and presumption, to press against men to the extent of their lives. Papers have been spoken to generally by persons declaring their belief of their being the hand-writing of the prisoner—a testimony often given very rashly, even if not from persons in the suspicious situation, to say no worse of him, of Mr. Dutton, but who often draw very rash conclusions upon the subject of hand-writing. Papers are by that means proved, and men made responsible to the extent of their lives, by a single witness coming and saying, he verily believes the paper to be the hand-writing of the person under accusation.

A paper has been produced, supposed to be a letter of Mr. O'Connor's. Mark, gentlemen, the danger of relying upon circumstances, proved by witnesses very frequently, who certainly do not intend to misrepresent the truth, who come *bona fide* to declare what they believe to be true, but who yet give testimony too rashly and preemptorily, upon a subject

affecting a man's life. Such was the case with Mr. Lane, upon whom I do not mean to cast any imputation; Mr. Lane undoubtedly had good opportunities of being conversant with the hand-writing of Mr. O'Connor; he came here and gave evidence respecting it, and I do not suspect he intentionally meant to say any thing that was not true. All that I mean to state is, the extreme danger, when men are upon trial for their lives, of relying upon such sort of testimony, even when given by men who are the most fairly disposed. Here is a letter read against Mr. O'Connor as his letter; it is proved to be so by Mr. Lane. Now, gentlemen, suppose that this letter had been a letter of more moment than it is.—It is urged as one circumstance against Mr. O'Connor, connecting him with Mr. O'Coigly.—Suppose it had been a paper of still more importance, the learned judge, in summing up that evidence to you, would have stated this of course, as testimony given against Mr. O'Connor, positively proving it to be his hand-writing; and if Mr. O'Connor could not have proved the reverse (which it is extremely difficult to do, unless he happens to know whose letter it is; in the case of a letter only signed by initials, and those not easily made out); what must have been the consequence. It would have been said, Mr. O'Connor only says it is not his letter, but he does not prove that it is not his; and it is proved on the part of the prosecution, that it is his—you must in that case have taken it into your consideration as uncontradicted evidence against him. Suppose upon this paper, thus proved, you had brought in your verdict of guilty, and had sentenced Mr. O'Connor to death. Gentlemen, you would have been very soon in the distressing situation stated by lord Hale. Every one of you probably would have had reason to recollect with regret, to the latest moment of your lives, the unfortunate verdict you had given.—This letter was actually written by a witness, whom I will call, and who will prove to you, that it was written without the least knowledge, without the least privy, of Mr. O'Connor. What would you have felt if you had convicted Mr. O'Connor upon such a paper, in consequence of the hand-writing being proved, by even a respectable witness, who spoke to the best of his knowledge and belief? If this had been pressed to connect Mr. O'Connor with the paper in question, which it is in part, and this had more pointedly connected him with it, what would you and the world have said, if after you had pronounced your verdict, and Mr. O'Connor had in consequence of that verdict suffered death, the real state of the fact which had not been known at the time, had been afterwards accidentally discovered, as in the case stated by lord Hale, where, after persons had been executed, in three instances irrefragable evidence appeared, negating the ground upon which they had been convicted. If it had been afterwards discovered that this gentleman had not

been in the kingdom at the time, but was in Ireland, and therefore that it could not possibly have been written by him, and this circumstance had formed an ingredient in your mind to have convicted Mr. O'Connor, and sentenced him to death, what would you all have said? what would the world have said? The same observations apply to the testimony given respecting identity of person, if it had not been detected, in the instance of the woman, who on her positive oath pointed out Mr. O'Connor to be the man who came to Canterbury on the Sunday night, which he unquestionably was not.

You see the extreme danger of relying upon this sort of evidence, and still more on presumptions built upon it, and little circumstances tending to implicate a man in those foul crimes, the punishment of which is so dreadful and severe.

But, gentlemen, I do not mean to trouble you with a farther detail of all the minute circumstances that belong to this part of the case. I have probably omitted many; but as far as respects this head of the subject, I shall entirely leave it with you; any defects of mine, and very many I am conscious of, will be well supplied by the gentlemen who follow me, and still more by the learned judges, who are ultimately to sum up the case.

I shall submit to you, upon this first point, the proof of which must be made the foundation of a verdict of guilty against all, or any of the prisoners, that there is not a sufficient ground established by the evidence, to induce a jury to pronounce, that this paper, in whose possession it was found, and by whomsoever it was intended to be carried out of the kingdom, was certainly sent for the purpose, and intended to be delivered to the Executive Directory of France. There is no clear and positive evidence affirmatively to prove that first proposition; and I rely upon the contents, of the paper and the circumstances under which it was found, as affording reasonable and fair evidence to the contrary. Under these circumstances, I submit that it cannot but be admitted to be matter of doubt at least, whether it was so intended or not; and supposing it to be matter of doubt, it will not be denied that the inevitable consequence is, that it must produce a verdict of acquittal; because you are not, in a doubtful case, to hazard a contrary verdict, which is to be attended with consequences so highly penal.

Gentlemen, it is however necessary, on behalf of one of the gentlemen for whom I appear, Mr. O'Connor, that I should detain you a very short time longer, to point out the circumstances which relate personally to him, for the purpose of showing that it is not possible he could have the design imputed to him, that he could have intended to be the bearer of this paper, to carry it to the Executive Directory of France, for the purpose of inviting the invasion of England. To prove that he did so, there is not, on the part of the

crown, one single tittle of direct and positive evidence; I say, gentlemen, there is not, because I do not consider the general evidence on the other part of the case, proving in him a purpose to go abroad, a purpose to go abroad in the company of others, a purpose to go secretly out of the kingdom, which I have already explained to have been done, with a view of avoiding the danger that pressed upon him; this I do not consider as direct, certain evidence, pointedly applying to this part of the case, or as connecting him with the individual paper in question. I am sure you will feel that a hundred cases may be stated, in which persons may form a plan to go out of the kingdom together, and yet it by no means follows that they are all going, after they have left the kingdom, to the same place, or for the same purpose; a variety of different circumstances induce men to a change of country—danger, dislike to the place they are in, business, amusement, attractions in the place to which they intend going; several persons may agree in wishing to leave the country in which they are, without looking forward to the same object, or intending ultimately to confine themselves to the same spot. One man is going to Holland, another to France, a third to Switzerland, a fourth to Italy, and so on; all the party splitting and dividing the instant they have got abroad, yet all wishing to get out of the kingdom.

Again, there may be four or more persons united in a plan of going out of the kingdom, each having his own motive for leaving it; one, for instance, may be going for his health; another, for fear of his creditors; a third, because he apprehends that a charge may be made against him for any crime committed; a fourth, merely for purposes of amusement; a fifth, for purposes of public or private business. They would all be united in an intention of going into parts beyond seas, and might all, for that purpose, take a coach or vessel together, and go abroad together. What then? Is it to be inferred, because they leave the kingdom together, that they have all the same motive, the same place of destination, the same ultimate object. No, certainly, it concludes nothing with respect to the motive of each individual, proving only many to be going away in one company; and proving the intention of any individual of the company to be of a treasonable or other criminal nature, or that he had committed any crime for which he was flying from the country, burglary, murder, or the like; that he had been engaged in a duel, or done any thing else, the consequences of which were highly penal; proving, I say, any of these to be his reason for going, does not prove that it is mine, who go with him, or that of any other person who happens to be of the company. Where, therefore, evidence is given of a personal and individual motive, it would be the rashest conclusion in the world to press that against any more than the person whose mo-

tive it is, merely because they have agreed to go abroad with him, and are found in company with him.

To a certain degree they may be said to be united in design, viz. in one common wish to go out of the kingdom, and they may be farther united in the same wish that their departure should be private, each for a different reason; but what is the motive of one is not the motive of another; what is the motive of Mr. O'Connor, for instance, is not the motive of Leary his servant; the master goes for his own business, the servant to follow his master. One gentleman goes out of the country because he has taken part in the politics of another country, that makes it unsafe for him to remain in it; another may be influenced by any other of the various motives I have suggested. Apply this reasoning to the present case—Four natives of Ireland are found going together out of this kingdom privately, and so far they are proved to be connected together; but it does by no means fairly and reasonably lead to the conclusion, that the motive of one, if proved to be improper, was the motive of the others. I do not mean to state that there may not be circumstances to connect them as to purpose and motive, but I trust I have shown, that merely connecting them in the purpose of the voyage, or journey, is perfectly inconclusive as to the charge of a traitorous conspiracy. If there were specific proof that one of them was going to France for the purpose charged, yet his individual intent is not, standing alone, to be considered as proper evidence of the motive, object, or destination of the rest; still less is it capable of being so pressed in the case of a treasonable act, such as the present is supposed to have been, which is more naturally the act of one than of many, and where the evidence properly fixes it upon one only, to the exclusion of the rest.

A paper is found, under circumstances that properly confine the responsibility for it solely and personally to an individual: I take it, if there is any proposition established in the usage of common life, it is that every man is alone responsible for the contents of his own pockets. If it were not so, consider what would be the consequence? If any one could be convicted of a crime, by being made answerable for the contents of another man's pockets, no man could safely go in company any where with another, and certainly not privately, without saying, Let me first examine your pockets; you must let me see the contents of your coat, waistcoat, and breeches pockets; nay, to be perfectly safe, he must go farther, and say, Strip to your shirt; for if you have any thing about you any where, I do not know but I may be made responsible for it. He must see all the luggage of his fellow-traveller, and ransack every thing belonging to him, before he could safely go out of the kingdom in his company;—for Mr. O'Connor was hanged at Maidstone, because he went

in company with a man whose pockets he had not examined. If such a doctrine were to prevail, any man who is in future going out of the kingdom with another, or travelling with him within the kingdom, must use the precaution I have stated, at the peril, if he does not, of being made responsible for the contents of the trunk or other package, the pockets and pocket-book of his companion. This can never be seriously stated. Where any article is found in the pocket of another, the proper inference is, if there be no evidence to carry it farther, that it is exclusive personal possession in him alone. It attaches individually and personally on him, and it is in his sole possession; he alone is to be called upon to explain it, he alone is to be responsible for it, unless there be some other evidence to make any body else responsible. It throws upon those who wish to extend the responsibility to others, the onus probandi; *prima facie*, a paper so found excludes the idea of any participation and co-operation in any other person; I say, *prima facie*, it is to be considered as not being in the possession of any body other than the individual in whose pocket it was found, though certainly it may be made out otherwise by extrinsic circumstances.

Let us see, then, what other evidence there is to rebut this presumption, and to show that Mr. O'Connor was any way connected with this paper. It might have been proved, that though the paper was found only in possession of one, yet that the rest, and in particular Mr. O'Connor, had actually seen the paper, that he had read it, that he had composed it, that it is in his hand-writing, that he had been in company when it was written, that it had been read over to him. Is there any evidence of that sort? Has there been a single witness called to suggest that Mr. O'Connor ever saw it in his life till it was produced in this court? Is there any the least evidence that he ever heard of it, that it was ever read to him, that it was ever any part of it communicated to him? Is there the smallest tittle of evidence, on the part of the prosecution, to this effect! Here is all the presumption of the paper's belonging to another, and proof of its being in possession of another, and not a tittle of positive evidence to prove that Mr. O'Connor ever saw it, heard of it, or had ever the contents of it communicated to him in his life. Are you to presume this without, and against evidence? The gravest and wisest authorities have said you ought to pause, in a case of life, even where there is some evidence, to be cautious how you adopt presumptions against any man. How, then, can you venture to presume, without any evidence, that Mr. O'Connor knew this paper was in the pocket of Mr. O'Coigly, and that he was intending to carry it to the Executive Directory of France? It is impossible for Mr. O'Connor to prove that he knew nothing of it. Though that be true,

he cannot prove it, because a negative does not admit of proof. If the charge were made against any one of you, who had unfortunately been in the company of these persons, going abroad with them, it would have been impossible for you to give positive evidence to negative your connection with the paper. You could only have said, I never saw the paper, never heard of it in my life, I knew nothing what this man had in his pocket-book or great-coat pocket: prove that I ever saw it, heard of it, or that the contents ever were communicated to me. If the prosecutor did not give such proof, as he certainly has not in this case, you will surely think it unjust to be convicted upon presumptions, without any proof of actual knowledge.

What other evidence has been adduced to prove Mr. O'Connor knew of this paper? Why, it is said Mr. O'Connor was one of this company; that after he was apprehended, he disavowed his knowledge of any of them; that he did not acknowledge the baggage, and that he said what was not true with respect to the destination of his voyage. I have already stated what, I trust, you will consider as a fair and reasonable ground, for an indulgent construction of what a man unguardedly says in the moment of alarm, oppressed with the apprehension of being sent to gaol, on so heavy a charge as the present; I trust you will think it ought not to be pressed farther than to infer a consciousness in Mr. O'Connor that he was doing what he had no right to do, which must certainly be admitted to have been the fact. He had not a right to go out of the kingdom without a licence; that will account why this gentleman did not conduct himself with that candour and prudence which he ought to have used, and the frank disclosure of every thing that belonged to the affair. He knew he was attempting what was forbidden by law, and from what he had endured in Ireland, he dreaded the danger of another imprisonment. He was alarmed, and had no friend to advise or direct him; he knew that some of his companions were suspected fugitives like himself; but to infer, because he acted in the imprudent manner which has been shown, in the disavowal of those companions, and the concealment of the destination of his voyage, that he was concerned in, or knew the contents of this paper, seems to me to be a most rash and unjustifiable conclusion.

It is farther stated that Mr. O'Connor did not acknowledge the baggage. Mr. Attorney General said, What! not own baggage so valuable—property so considerable! What can that be owing to but guilt?

In the first place, what reason was there for Mr. O'Connor's not acknowledging this baggage, when in this baggage there is not a single thing found to afford any proof against him. All these clothes, the money, and other articles of consequence, that were found, why, it is asked, should not he own them? and you are desired to draw an inference from that

circumstance, and impute guilt to him. But what is to be imputed or inferred from hence? If you mean that it is a circumstance to show his reluctance to be identified in person, that is negatived by the evidence, that the moment he came up to Bow-street, upon being asked his name, he acknowledged it. With respect, too, to his denial of his baggage, I do not observe, in the examination of Mr. O'Connor, given in evidence, that he does deny it. He says, the keys have been out of my possession, things may have been put into it since it has been taken from me, and therefore I do not choose to be responsible for it, and, on the contrary, he distinctly claims the money, states that it is his, and he also claims the property in the baggage. The fact, therefore, of a supposed disclaimer, on his part, of the baggage, totally fails, and the inference, of course, with it.

The next circumstance relied upon is a letter of Mr. O'Connor's, written to my lord Edward Fitzgerald, which was found in Leinster-house, in the apartments of lord Edward Fitzgerald. You have heard it read; what does it prove? Why, Mr. Attorney-General says, that in this letter he indicates, with respect to himself, an intention to go to Williams, which Williams is, by the cypher, he says, made out to be France; and he likewise speaks of getting Maxwell off; he talks of Nicholson and her set, of the black terrier, and so on; which are evidently, says the attorney-general, mysteries, not meaning what they appear to mean, but having some other meaning. What then? why, says he, it is incumbent on Mr. O'Connor to explain them. Well, and if he does not, what then? Why then it remains a mystery, and because it is a mystery, it must be treason. If it is not explained it is mystery, and all that is a mystery the prosecutor has a right to say is necessarily treason. Why so, gentlemen? Are you to follow these mysterious interpretations, and to take upon yourselves to hazard a conviction, when you are left in a state of mystery and doubt? Are you to take for granted, that Nicholson and her set must mean some other person, and then at random to interpret whom in particular the expression does mean? It does not appear who Maxwell is, therefore you are desired to conclude it must mean O'Coigly. Is there any evidence to prove that he ever went by that name, or any circumstance to connect him with it? Mr. Attorney General says, it is incumbent upon Mr. O'Connor to explain this. Give me leave, in the first place, to request the benefit of the observations made in the beginning of my address, that I am not on the part of the prisoner, charged with so heavy a crime, bound to explain at all. I have a right to maintain a sullen silence, to say for him, I am not guilty; it remains for you, the prosecutor, to prove me so. If I do not explain any letter or paper, it must be left to speak for itself. If

you can, either by internal evidence of its contents, or from other circumstances, explain it, and ascertain with certainty that the meaning is against me, you are entitled to the effect of it; but mere non-explanation on the part of the accused, is not a ground which can aid or fix the evidence given on the part of the prosecution. The prisoner's explanation might contradict it, but his silence cannot help it. Let me ask, too, whether it is reasonable, if Mr. O'Connor gives no explanation of this letter to lord Edward Fitzgerald, to conclude to the extent against him, to which it has been pressed by Mr. Attorney-General.

Does this letter constitute any part of the charge against Mr. O'Connor? Had he the least notice till yesterday that it was to be produced against him? Had he before the smallest idea of such a letter? and yet he is expected instantly to be prepared, not only with an explanation, but with proof in answer to it, for his own personal explanation is nothing. Is it reasonable, because he is not able to explain the contents of a letter, which does not constitute any part of the known charge against him—because he is not able, when surprised by the sudden production of a letter written to a gentleman in another kingdom, and plainly relating to persons and things in another kingdom—is it reasonable to adopt the prosecutor's arbitrary, unproved interpretation, and upon the strength of it to convict Mr. O'Connor? I insist it is not reasonable. If the prosecutor had meant to press for a conviction upon this letter, it should, if possible, have been introduced into the charge, or some notice should have been given of it, and the explanation of it demanded. The prosecutors have had it in their possession from the time it was first found in Leinster house; they have had opportunities which we have not had, to explain and to prove all the circumstances belonging to it. They long knew of this letter, I did not. Am I then to have pressed against me, that I give no evidence to explain mystery, when they give no evidence to prove that that mystery has the meaning which they put upon it? I say, that if the inquiry concerning this letter ends in mystery, it ends in doubt; and in a doubtful case you certainly are not to adopt the meaning which makes against the accused, rather than that which makes for him.

But with respect to this letter, how does it in any part connect Mr. O'Connor with the paper found in the great-coat pocket? In that letter Mr. O'Connor is writing confidentially to lord Edward Fitzgerald. Is there one word of intimation that he is proposing, or concerned in any plot here, to invite an invasion of England? that he is employing any person for such a purpose, that he is himself to be the bearer of any intelligence for such a purpose, or that he is to accompany any person who is going abroad for that pur-

pose? Can any such meaning be collected from this letter? which, by-the-by, is a letter without any date; and when written, and what it relates to is altogether left unexplained by the prosecutor. From the way in which this Maxwell is mentioned, it is plain he was not a person to accompany Mr. O'Connor, for the letter speaks of getting him off. I say therefore, that throughout this letter, there is nothing in any part of it that necessarily, or by fair inference, connects Mr. O'Connor with the purpose, or manifests the intent imputed, viz. that he was concerned in a plot to procure an invasion of England. But there is a fair inference to be drawn to the contrary, from the silence of the letter on that subject, though written in confidence, in the most undisguised manner, to his friend lord Edward Fitzgerald. You observe that it relates altogether to measures in Ireland, and respects another kingdom, and not this. All that he says in it, respecting England, is nothing more than the common observation of a gentleman residing at the time in this country, and remarking upon the state of it in general terms, as any individual, casually resident here, might have done to a friend in another kingdom. I contend, therefore, that as far as we can get at the contents and meaning of this letter, there is nothing to prove Mr. O'Connor concerned in any plot to invade England, and that it throughout shows his mind was wholly intent upon the affairs of Ireland. It can never, therefore, fairly,—whatever ground it may be said to afford for any other imputation upon Mr. O'Connor, which is not the subject to-day,—it can never be fairly applied to the question now under consideration, viz. whether he was concerned in carrying this paper to France, to invite an invasion of England; for throughout that letter there is not any one passage that intimates, or is expressive of any such intent.

One passage in it has been much relied upon; wherein he says he is going to *Williams* (which the prosecutor says is *France*), and that he means to be active there. Now I will assume that *Williams* means *France*; what then? I mean to be active there; active, how? What do you mean to do? Active in public or in private business? That is not said. Oh, we must therefore suppose it to be public business, and that public business you must infer to be treasonable business, and that treason you must conclude to be treason directed against England. Why? because whenever a man states that he is going to *France*, and intends to be active there, you must necessarily conclude he means to be active in a treasonable correspondence against England. Is not this straining the meaning of a sentence, which only imports some intended activity, without fixing what? It might relate to business wholly private, to the private concerns of lord Edward Fitzgerald, who had married a French lady, and might have a hundred concerns of

a private nature, which Mr. O'Connor might have undertaken to transact for him there. It might relate to activity of any kind whatever; and unless it is proved to be activity of the nature stated in the charge, all that you can make of it is, that it is left in doubt what it alludes to, and therefore you can form no certain conclusion about it. Observe, if a contrary reasoning were to prevail, what would be the effect with respect to the act, which prohibits any person going into *France*. If any man goes into *France* secretly, he is liable, under that act, to suffer six months imprisonment, on being convicted of that misdemeanor; but if it is proved that besides going to *France*, he meant to be active there, then it is treason; so that act could only apply to a person who meant to do nothing when he got to *France*; and as to any man who meant to be active there, he must intend treason. Now no man would go out privately to *France* without some reason for it, and therefore every secret departure which, under the act, amounts only to a misdemeanor, must, with the addition of a mere intimation that he means to be active, in some thing or other, be converted into high treason. I submit that no such inference can fairly arise against Mr. O'Connor from that circumstance.

Some observations have been made respecting his dress, his money, his baggage, and all the more minute articles of property, that are now spread out before you, with a view, I suppose, to induce stronger suspicions in your minds, of the guilt of Mr. O'Connor; but how can such in any respect bear upon this part of the case?—That he was going abroad, clearly appears from his examination, and many other circumstances; and more than that, all this apparatus does not seem to me to prove. With respect to his taking with him abroad the money that is proved, why any gentleman going to stay for any time, would of course take money for that purpose. It cannot be supposed to be money for any other purpose. It is not a sum that could be designed for procuring active assistance from abroad; nor is it possible to suppose, that Mr. O'Connor, a fugitive from his own country, and who had transferred away all his property there, was in a situation to go with pecuniary means of bribing, or corrupting, *France*, to take part in the invasion of England. The money was destined for his own purposes, while he continued abroad, during the distractions of his country. If this gentleman had been going in the pay of *France*, he did not want any money. I take for granted they would have paid such a convert to treason pretty handsomely. It is plain he depended upon himself, and therefore he took this money for his support.

Gentlemen, excepting this, the only extrinsic circumstances urged against Mr. O'Connor are, that he is seen in company with Mr. O'Coigly, before they set off, dines with him

ut Mr. Bell's, calls him by the name of Jones; and afterwards says that his name is O'Coigly; upon that, I shall detain you but a few minutes, because it seems to me, that these circumstances are already comprehended in the general observations I have made. They merely tend to show, that he was induced to act towards Mr. O'Coigly, as Mr. Bell has stated—that Mr. O'Coigly (who certainly was in Ireland according to the letter the prosecutor has produced, the 14th of January, 1798, and does not appear, by any evidence, to have arrived here, till about ten days before he set off) had recently come from Ireland, and appeared, as Mr. Bell stated, to be a new acquaintance of Mr. O'Connor's; both intending to go abroad, they agree to go together, and to take the means of concealing his design; that is all that is proved by it; and that is perfectly consistent with the case already stated.

Gentlemen, I shall only just observe here, with respect to Mr. O'Connor, that there is not the least proof he had any previous acquaintance with one of the persons, who is supposed to be a co-conspirator with him in his plot, I mean the prisoner of the name of Allen; you observe there is no proof of any previous knowledge; and the fact is, that he never saw Allen in his life, prior to their meeting in the Whitstable hoy; and yet it is taken for granted, that he is willing to entrust his life in the hands of this stranger, of inferior situation of life, and to be a conspirator with him and his own servant—He who had suffered so much from suspicions against him in another country, is supposed to be so indifferent about imprisonment, and so careless of life, as to trust himself in the hands of this miscellaneous party, upon an embassy like his.

Gentlemen, I will not detain you longer on his head. I trust I have shown you, that there are no extrinsic circumstances adduced in proof, on the part of the prosecutor, to bring this paper home to Mr. O'Connor, or to render him responsible for it. I have only now to observe, what evidence is afforded by the contents of the paper itself as applied to his subject, and in that I shall show not only that they produce no evidence against Mr. O'Connor, but the most decisive negative of any connexion with it, on the part of Mr. O'Connor. Gentlemen upon this subject, I hope I shall only detain you a very few moments longer—I am extremely sorry to have repassed upon your time, and that of their lordships so long. I only request your indulgence a very few minutes, while I point out, as material for your consideration, a passage I have before read from this paper, ending to reflect upon the confidential friends of this Mr. O'Connor, who is charged to be concerned in it. Negatively I say, that on the part of the prosecution, they have not proved against Mr. O'Connor, that he was connected with the supposed author of the

paper, or with any society from whence it is supposed to have issued.—As far as any evidence goes, it is negated by his not belonging to any society at all.

Now, gentlemen, if I prove to you positively on the part of Mr. O'Connor that he was connected most closely and intimately with all the persons, who are the subject of attack in this paper; and that there is all the evidence which the nature of the subject can admit, negatively, that he is not connected with the party who wrote it; it seems to me impossible that the contents of any paper can more clearly evince in both ways, for the accused, and against the accusation.—When men read any paper, they generally draw their inferences, with respect to the author, from the style of the imputed author, if they are conversant with it;—or from his habits and connexions in life, they judge how far it is probable he can be connected with any particular composition.—Judging by this criterion, could Mr. O'Connor have been the author, or in any respect privy to a paper of this sort now before you?

Under the first head, I shall content myself with referring to the evidence, and observations before made, completely negating all connexion with the supposed writers of this paper. Under the second, I shall presently call many of those gentlemen who are the principal objects of attack in this paper, the gentlemen connected with opposition, whom it distinguishes as men who have deserted the cause of liberty, and exposes as proper objects of the vengeance, and resentment of invading France. Gentlemen, I request of you to consider what was Mr. O'Connor's situation, and reflect upon this, as if it were a business of common life, and try whether there is not the most convincing proof of my argument. If you will favour me with your attention for a very few moments, I think I shall be able to satisfy every one of you, by the most decisive criterions, fortunately for the vindication of truth and innocence, ever occurring in a court of justice from the *evidentia rei*, the paper itself, the most decisive proof to negative Mr. O'Connor's being the author of it, connected with or approving of it, upon every possible hypothesis that can be adopted. Suppose him only to possess the feelings of a man, to have a heart accessible to the common motives which govern human nature. Weigh every motive that can operate upon the human mind. Suppose him even to have been governed by interested motives; put it, that he is the basest creature that ever existed, that he is looking only to his own good, advancement, or emolument, in any way in which the case can be viewed. I say this paper presents the most decisive negative to the supposition, that any man in the circumstances of Mr. O'Connor, and acting upon any motive that can be suggested, could possibly have been the author of it, or in any way concerned in it.

Gentlemen, Mr. O'Connor had smarted sorely under the rod of adversity—unquestionably on account of his principles, and, no doubt, purely and honestly acting upon them. Whether those principles were, or were not right, is not the question now, but in consequence of them he had forfeited and given up the dearest connexions he had in Ireland; he had resigned his seat as a member of parliament, because his political principles were not approved of by his noble relation who brought him into parliament, lord Longueville. He had acted, therefore, at least a disinterested, an open, and manly part, in the conduct he had observed in his own country. He had suffered a close and dangerous confinement in a gaol for six months. When liberated what had he left?—property?—They say he had transferred it all.—His natural relations and connexions?—From them he was separated;—from his native kingdom he was compelled to become a fugitive. What then, I ask, had he left? dear, intimate, and affectionate friends.—They were all that his adverse fortune had left him.

Gentlemen, they have remained his friends throughout all the period of his adversity. They were not velvet friends, with whom misery parts, the flux of company—but such as approving, loving, and respecting him, had clung to him throughout all his hard sufferings. They loved him for his principles and virtues; they admired him for his talents and abilities, and firmly adhered to him throughout all the adverse events of his life.

Good God! Gentlemen, can we suppose a man to be so constituted, to have so little the heart and feelings of a man, as to desert or betray his friends at a time when all most strongly feel their attachment, for it is in the hour of adversity when the value of friends is most warmly impressed on the mind. In prosperity their kind attentions do not so forcibly affect the heart. But when we are exposed to the storms of adversity—when the world frowns upon us, if a few faithful friends remain steady around us, is there a man so insensible as not to feel the attachment of such friends, as not to love them, and cling to them? Gratitude, sensibility, tenderness, attachment, every motive must have rivetted such friends to the feeling and generous mind of Mr. O'Connor. He comes over to this country, lives with them in the utmost intimacy and closest connexion; they are his bosom friends, the beloved friends of his life, he has no other. The prosecutors have not proved that he had, and the direct negative is in proof. What now are you desired to conclude of Mr. O'Connor, a man of talents, a man of a disinterested mind, of a manly spirit, of an open disposition, who had always acted with the most perfect frankness through the whole of his public and private conduct, who had never, in any instance disguised the sentiments of his heart? that he should have lived with these gentlemen, held out the hand

of friendship to them, and received all their obligations and their kindness, while, at the same moment he was plotting a base assassination against them, marking them out as objects of destruction and vengeance, writing their death warrant, *notat & designat ad cedem unumquemque*; crying out to a ferocious and barbarous enemy, destroy all my friends and connexions, the only ones I have left; these are all my bosom friends, and adherents whom I love; they have served me and loved me dearly; they have faithfully stood by me in all the adversities of life, therefore destroy them to a man, save not one. And why is all this, gentlemen? If he were carrying intelligence to the enemy, and inviting them to invade the country, could he not be silent with respect to those friends? why need he so laboriously endeavour to secure their destruction; for you must see, gentlemen, that the principal object of this paper is, to mark out for destruction the bosom friends of Mr. O'Connor.

What then can you suppose Mr. O'Connor to be made of? Can you believe, that with respect to those who prosecuted, I will not say persecuted him (though in his judgment he might think so of all who had been the authors of his sufferings) can you suppose he is made of such charity, that is of so forgiving and christian a spirit, that of his enemies (as we may call them) he says not a word; he does not point them out as objects of resentment? But, at the same time, of such a fiend like disposition, that he is to implore the destruction of all those who have stood by him, and who have been kind and affectionate to him? Now, from what motive is he supposed to do this? I have shown you that this address, informing the French that all the principal people of England were against them, was certainly no encouragement, nor could any man of sense urge it as a reason for them to invade England. What then could induce Mr. O'Connor to go out of his way to point out his friends as objects of resentment, as political impostors, merely to weaken the argument he is supposed to be enforcing. It must be mischief for mischief's sake, perfidy for perfidy's sake, pure unadulterated ingratitude baseness and vileness of heart. Gentlemen, I entreat you to consider the utter improbability of this charge. I submit to your better judgments whether the observations I have made are not fairly deducible from the contents of the paper in question, and whether they do not afford a fair reasonable internal evidence, stronger than ten thousand witnesses, to negative any possible connexion of Mr. O'Connor with it.

Gentlemen, permit me to detain you only for a single moment longer, with an additional argument resulting from the same source. This Mr. O'Connor whom you are desired to believe to be a base hearted man, one who has no regard for his friends. The characteristic is, by all that know him, that his mind

possesses the truest ardour of friendship; that there never was a man more passionately attached or devoted to every friend he had. He was on that account chosen as the object of friendship, by men who could have no possible motive for selecting him as such, but their knowledge of his worth—and they are not men to be easily duped. Their enemies will admit that they have too much sagacity and penetration to be deceived in the character of a man with whom they were in the daily habit of associating. If Mr. O'Connor had really entertained the sentiments contained in this paper, it could not have remained unknown to those, who had the constant opportunity of the most confidential intercourse with him. And by what possible motive could these gentlemen be influenced in their friendship for Mr. O'Connor but a conviction of his deserts? They were incurring a degree of odium in attaching themselves to a person who had long been the object of suspicion and prosecution; yet did they still adhere to him, and afford the strongest positive evidence that they had never seen any thing throughout Mr. O'Connor's conversation, or conduct, that indicated the least deviation from the character of a true and faithful friend, possessing on all subjects, public and private sentiments congenial with their own.

But, gentlemen, suppose for a moment, that Mr. O'Connor has no regard for his friends, that, on the contrary, he is made of such sort of stuff, that the more friendly any man is to him, the more is such person the object of his vengeance and resentment; yet I presume it will hardly be supposed that any man breathing is not a friend to himself, and on this supposition see whether the charge is not completely negatived.—If Mr. O'Connor was his own friend, I ask whether it is possible he could intend to cast off all that remained to him dear in life, in either country, only to effectuate his own disgrace and ruin? A man may, by some fanciful notions of public principles, be induced to betray his country (though he can never be justified in so doing) but what can induce him to betray his private friendships?—Such conduct would make him an object of detestation in every place throughout the civilized world.—By what supposable motives could he be influenced to such treachery? Was it to gain in a foreign country friendship, emolument, or any of the objects that ambition might suggest to the mind? Then at least you would suppose the paper adapted to attain those purposes; but if you find that it is directly the reverse—that it is calculated to overturn and blast every such hope, surely this will furnish an additional argument against the privity of Mr. O'Connor. Is there any part of the paper calculated to conciliate any favour or attention from France towards Mr. O'Connor?—Give me leave to observe in the first place, it professes to be committed to the care of only one individual.

It says “the citizen who now presents this to you.”—Does not that import, that it is to be conveyed by one, and one only? That one also is stated to have been the bearer of something before. Can this be fairly applied to more than the individual in whose pocket it was found, if it presses against any body at all? Surely if Mr. O'Connor, had been base enough to become a participator in a business of this kind, he would at least have said to his employers, make some honourable mention at least in this paper of me, who am going to risk my life, and cast off all my private and public connexions and friends in this service—to sacrifice, for your sake, every remaining hope in life. Let it contain some testimonial that may point me out to the notice of these new friends. Or, if Mr. O'Connor is not worthy, although there is a description of the individual who is to be the bearer of the paper, that there should be any mention in favour of him in it, surely he would at least have had interest enough to have prevented any passage being inserted, that would operate against him.—Now were that the case with this paper, what would the French Executive Directory have said to Mr. O'Connor if he had brought this paper, and presented it to them? Who are you, Mr. O'Connor? You desire us to invade England. What connexions have you in England? To whom do you belong there? We know perfectly well who are your connexions; it is notorious who the gentlemen are in that country, with whom you have passed the private and familiar habits of your life, and with whom you are united in the strictest intimacy and friendship.—Have you got any testimonial of a connexion with any new set of friends, or in favour of those with whom you are known to have been hitherto connected? Let us read your paper and see what it says of these friends of yours.—Why, that they are all to a man political impostors. Then what are you *nascitur a sociis*, If they are political impostors—so are you—nay, we are the more convinced of it—because you have shown your own private perfidy, by producing a letter to us, that tends to betray all your private friends, without discrimination or exception. Do you pretend to tell us you have been employed to become the bearer of a paper of this nature, and that you could not get inserted in it even a single exception in your favour, when all the gentlemen of a certain description, are in one general sweeping clause comprehended, as persons unworthy of confidence, and political impostors? Did not those who sent you choose to write in your behalf a single line of recommendation? We must suppose the Executive Directory would have necessarily condemned Mr. O'Connor; have pronounced him to be of the same description as his friends, viz. adverse to the cause of France, and political impostors. There could be no reason for mutual attachment, they would have said, between you and them, but because your public and private

Principles were the same. The paper you have brought, admits they are our enemies.--- You are the same.---What would then have been the consequence to Mr. O'Connor? All that he would have got by his errand would have been, to have exchanged the Castle of Dublin, for the Temple of France---there to have remained a degraded and miserable prisoner, without hope of redemption. He is then supposed to have risked his life, and cast off all his friends, to embark in a perilous and disgraceful business, with a double string to his bow (if I may use the expression), doubly insuring his destruction. If he is discovered by the English government, he is tried, as a traitor, for his life at Maidstone, for being the bearer of this paper, and if he presents it to the Executive Directory, he is shut up in a prison, if not guillotined, in France, for the description it contains of the public principles of his confidential friends, and consequently of himself, and condemned, upon his own showing, as an enemy, instead of a

friend, of the cause he professed to support.

Gentlemen, I will not trespass any longer on your time.---I am persuaded I need not farther urge the impossibility of Mr. O'Connor being the author of, or in any respect privy to the paper in question, if it was designed to be delivered by any body to the Executive Directory of France.

I beg pardon for having detained you and the Court so long, but I hope the great importance of the occasion will be accepted as my apology.---You are to pronounce upon this important case: I leave it thus with you, and I am confident you will give it a grave, solemn, and dispassionate consideration, laying aside every thing but the evidence produced in the cause, and the fair bearing of it upon the subject in question: and I have not the least doubt, but the verdict you will give, will be that which you will remember with comfort and satisfaction to the latest hour of your lives.

[*The remainder of this Trial begins vol. xxvii.*]

END OF VOL. XXVI.

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